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18242

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 551.

HENRY WILLIAMS, PLAINTIFF IN ERROR,

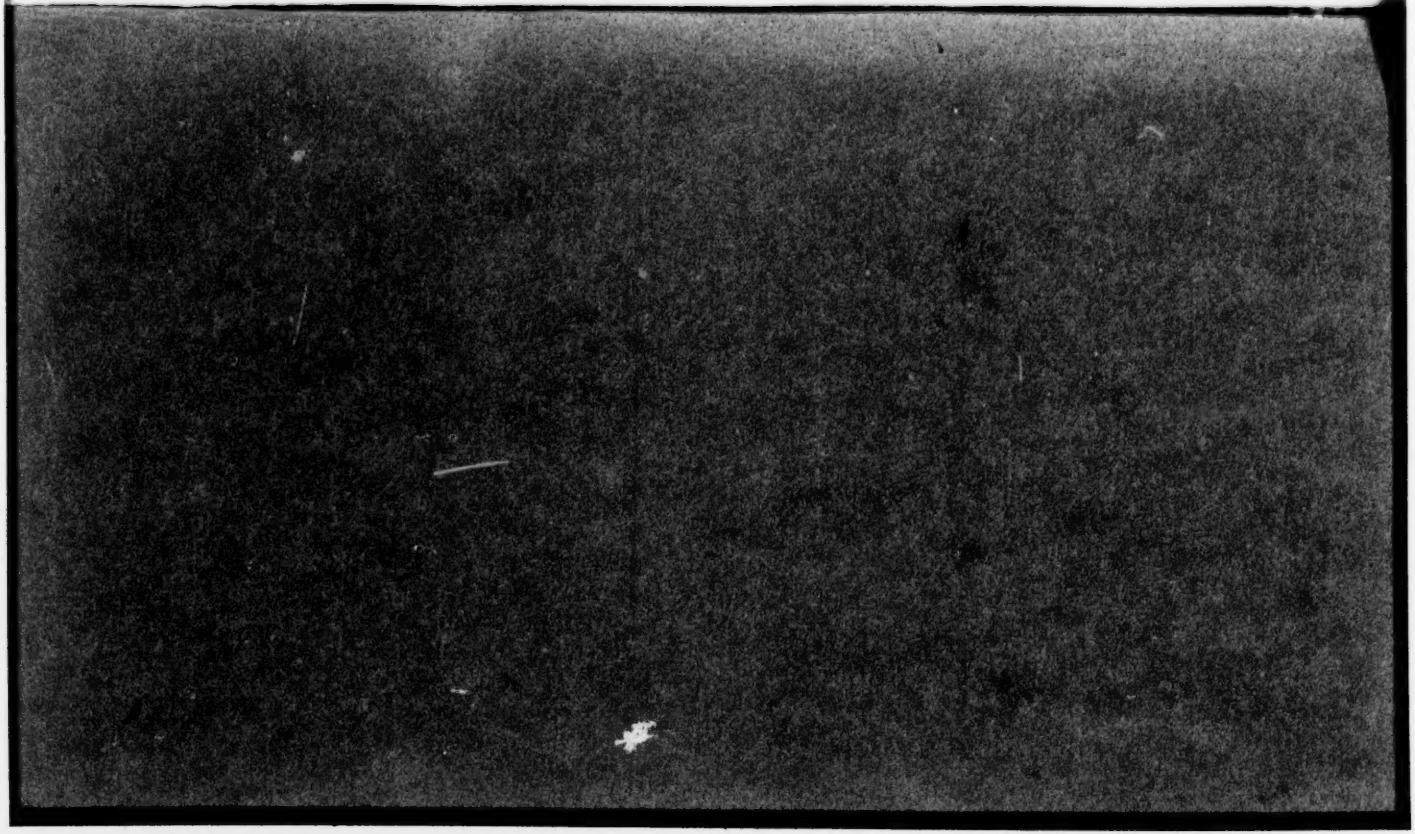
vs.

THE STATE OF MISSISSIPPI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

FILED DECEMBER 16, 1897.

(18242.)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 531.

HENRY WILLIAMS, PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSISSIPPI.

N ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

INDEX.

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1 Supreme court of Mississippi. October term, A. D. 1896.

Pleas and proceedings had and done at a regular term of the supreme court of Mississippi, begun and held in the court room, in the capitol, in the city of Jackson, on the second Monday, the 12th day, of October, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Tim E. Cooper, chief justice, and the Honorable Thomas H. Woods and the Honorable Albert H. Whitfield, associate justices; also E. W. Brown, clerk of said court, in person and by C. C. Campbell, his deputy; Thomas J. Wharton, marshal, and Thomas Grant, porter.

Proclamation having been duly made, the court proceeded to the dispatch of business.

Among other causes heard and determined was the following:

On the 8th day of October, 1896, there was filed in said court a record, in words and figures as follows, to wit:

Minutes circuit court Washington County, Miss., June term, 1896.

MONDAY MORNING, *June 15th, 1896.*

Be it remembered that a regular term of the circuit court for the transaction of criminal business in and for the county of Washington and State of Mississippi was begun and held at the court-house of said county, in the city of Greenville, on the 15th day of June, 1896, the day fixed by law for the holding of said court. There were present the Honorable R. W. Williamson, judge of the fourth judicial district of the State of Mississippi, presiding; B. G. Humphries, district attorney of said district, J. B. Hebron, sheriff of said county, and W. K. Gildart, clerk *fo* said court.

Indictment.

STATE OF MISSISSIPPI, *Washington County:*

In the circuit court in and for said county, at the May term
2 thereof, in the year of our Lord 1896.

The grand jurors of the State of Mississippi, taken from the body of the good and lawful men of the county of Washington, duly elected, empaneled, sworn, and charged at the term aforesaid to inquire in and for the body of the county aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present: That Henry Williams, late of the county aforesaid, on the 25th day of May, in the year of our Lord 1896, in the county aforesaid, unlawfully, willfully, feloniously, and of his malice aforethought did then and there kill and murder one Eliza Brown, a human being, against the peace and dignity of the State of *the State of* Mississippi.

B. G. HUMPHRIES,
District Attorney.

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MAY TERM, 1896.

THE STATE OF MISSISSIPPI
v.
HENRY WILLIAMS. } Murder.

Witnesses: Ella Hicks, Gus Miles, I. M. Muckle, Thomas Brown, Tom Jones, Dr. A. Bruce, Theopelas Brown, Addie Brown.

A true bill.

J. A. V. FELTUS,
Foreman Grand Jury.

Filed and capias issued this 2nd day of June, A. D. 1896.

WM. K. GILDART,
Clerk Circuit Court.

STATE OF MISSISSIPPI
vs.
HENRY WILLIAMS. } No. 4481.

This day came the district attorney, who prosecutes on behalf of the State, and the defendant, Henry Williams, in his own proper person, who, being solemnly arraigned and charged on the indictment herein with murder, plead not guilty. Special venire and copy of indictment waived by the defendant, Henry Williams.

3 In the circuit court of said county. June term, 1896.

THE STATE OF MISSISSIPPI, *Washington County:*

STATE OF MISSISSIPPI
vs.
HENRY WILLIAMS. } No. 4481.

Be it remembered that in the circuit court of said county, at said term, the above-styled cause came on to be heard, in the presence of the defendant certain proceedings were had to which exceptions were then and there taken by the defendant, as shown by special bill of exceptions herein filed and made a part of the record, to wit:

THE STATE
vs.
HENRY WILLIAMS. } No. 4481. Murder.

This cause coming on to be heard, on the first day of the said criminal term, being the 15th day of June, 1896, before plea entered the defendant filed a motion to quash the indictment, duly verified by the affidavit and oath of the defendant, and separate affidavits of John H. Dixon, Henry Williams, and C. J. Jones in support of said motion to quash.

Motion to quash.

Now comes the defendant in this cause, Henry Williams by name, and moves the circuit court of Washington County, Mississippi, to quash the indictment herein filed and upon which it is proposed to try him for the

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alleged offense of murder: (1) Because the laws by which the grand jury was selected, organized, summoned, and charged, which presented the said indictment, are unconstitutional and repugnant to the spirit and letter of the Constitution of the United States of America, 14 amendment thereof, in this, that the constitution of the State of Mississippi prescribes specially in section two hundred and forty-one just what qualifications are required of citizens of the State to become qualified electors, and in that same section of the said State constitution, adopted by the constitutional convention in 1890, it is provided that the election of officers shall be produced by those offering to vote, satisfactory evidence that they have paid such taxes as are required by the terms of said section, and in section two hundred and forty-two of said State constitution the legislature is empowered to provide such regulations as it deemed proper for the enforcement of the terms of the said constitution as relates to said sections, and in the exercise of which authority the State legislature of 1892 enacted section thirty-six hundred and forty-three, providing that the election commissioners of the county shall, at a cer-
4 tain time there named, appoint three persons, for each election district, to be managers of the election; and said legislature by virtue of the authority conferred as aforesaid by said State constitution, enacted section 3644 of the code of 1892, making the election managers aforesaid judges of the qualifications of electors, "and to examine on oath any person duly registered and offering to vote touching his qualification as an elector." And thus the registration roll is not prima facie evidence of an elector's right to vote, but the list of those persons having been passed upon by the various district election managers of the county to compose the registration books of voters, as named and mentioned in section 2358 of said code of 1892, and that there was no registration books of voters prepared for the guidance of said officers of said county at the time said grand jury was drawn. That there is no statute of the State providing for the procurement of any registration books of voters of said county, and considering the terms of the State constitution, section 241, prescribing the requirement of persons to be electors, and section 242 thereof, prescribing the constitutional oath, the defendant charges that that part of section 241 of the State constitution which provides that satisfactory evidence must be produced to the election officers of the county, and that part of section 242 of the constitution which requires the applicant for registration in said county to subscribe under oath to answer all questions propounded to him concerning his antecedents, so far as relate to his right to vote, and the granting to the legislature such authority as to authorize the enactment of the manner of appointment of election managers, as aforesaid, without prescribing any qualifications for such managers except that they shall be three persons, in section 3643, of code 1892. And the granting to the legislature such authority as is exercised and prescribed in section 3644 of statute, making the managers of elections at the various election districts the judges of the qualifications of electors, and empowering such managers to examine such persons as apply to vote touching their qualifications as such elector,
5 is but a scheme on part of the framers of that constitution to abridge the suffrage of the colored electors in the State of Miss., on account of the previous condition of servitude, by granting a discre-

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tion to the said officers, as mentioned in the several sections of the constitution of the State and the statute of the State adopted under the said constitution, the use of which discretion can be, and has been, used by said officers in the said Washington County to the end here complained of, to wit, the abridgement of the elective franchise of the colored voters of Washington County; that such citizens are denied the right to be selected as jurors to serve in the circuit court of the county, and that this denial to them of the right to equal protection and benefit of the laws of the State of Miss., on account of their color and race, resulting from the exercise of the discretion partial to the white citizens in accordance with, and the purpose and intent of, the framers of the present constitution of the said State, which constitutional convention by which the said State constitution was enacted consisted of 134 members, and that all were white men, acting, voting, and enacted said constitution, except one delegate, a negro, and that the said constitution proposing the abridgment of the suffrage of one hundred and ninety thousand colored voters of the State, by thus leaving to the discretion of certain officers, as to the right of such one hundred and ninety thousand colored voters, said discretion provided in the said constitution as here complained of was prescribed by that convention with that intent to so disfranchise said colored voters, because the qualifications prescribed by the laws prior to the adoption of said constitution and which voters of the State being qualified to vote in ratification or rejection of said new constitution had it been submitted to the qualified voters of the State for ratification, were that "all male inhabitants of this State, except idiots and insane persons and Indians not taxed, citizens of the United States or naturalized, twenty-one years old and upwards, who have resided in the State six months and the county one month next preceding the day of
6 election at which said inhabitant offers to vote, and who are duly registered, according to the requirements of section three of this article, and who are not disqualified by reason of any crime, are declared to be qualified electors," and that by those electors qualified under the requirements of the constitution and laws of the State, at the time of the enactment of the present constitution, there were one hundred and ninety thousand colored and sixty-nine thousand white persons, and though the said constitution was enacted with the purpose and intent to abridge the suffrage of a majority of the electors of the State, as aforesaid, and said constitutional convention was composed, with exception of one delegate, entirely of white men representing the views and sentiment of a minority of the qualified electors of the State, the makers of that constitution arbitrarily refused to submit the present organic law to the voters of the State for their approval, but declared it adopted, and ordered therein an election to be held immediately thereunder for all district and county officers throughout the State, which election for said *for said* district and county officers, and members of the State legislature were ordered to be held under registration and election ordinance of the said constitution, which election was held in November, 1891, and the legislature assembled in 1892 which enacted the statutes herein complained of, and the enforcement of the provisions aforesaid of the said State constitution and statute resulted in discrimination against the race of defendant, being that of negro, and by virtue of the exercise of such discretion provided for in the

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constitution and statute aforesaid, regardless of their having complied with the other terms of the laws, which discretion is to be exercised by certain officers therein named, was purposely provided in the organic law by the framers with the specific intent to discriminate against the colored citizens of the State aforesaid, who other than the use of said discretion with the intent aforesaid, and purpose aforesaid, satisfies the requirements of the new constitution and laws, and defendant's race would
7 have been represented impartially on the grand jury which presented this indictment but that the exercise of the discretion provided for in the constitution and the statutes enacted thereunder in enforcement thereof the accused is deprived of that equal protection of the laws of the State, because of the discrimination against the members of his race, on account of the fact that he and the members of his race are ex-slaves, and the descendants of ex-slaves, which is a state of servitude previously existing in this State, and because of their having once been slaves in this State, and the descendants of parents who were formerly slaves in this State, is the condition which caused the late constitutional convention members to provide in that constitution a certain discretion aforementioned, and the condition of the defendant, and the balance of the one hundred and ninety thousand negroes afor said, which induced the said members of the said convention to delegate the legislature of the State the power to enact certain laws to enforce the sections of the organic law aforesaid, and the previous condition of servitude of the defendant, and the negro race, which caused the legislature to comply with the terms of said constitution by enacting section 3643 and section 3644 of the code of 1892, and it is the enforcement of all these laws for the reasons and purposes aforesaid that the defendant has been by this proceeding deprived of the immunity prescribed in the letter and spirit of the Federal Constitution, 14th amendment thereof, and the enforcement of the State constitution and statute aforesaid, and the discretion purposely provided therein, to be exercised by certain officers therein mentioned, abridges the rights of defendant, and the rights of one hundred and ninety thousand negroes of the State, citizens of the United States, to vote, and such abridgment results from the exercise of the discretion provided for in the State constitution as aforementioned, which discretion was provided for by the members of the constitutional convention aforesaid, and which constitution was by that convention adopted, and the power so granted the State legislature, with the
8 intent on part those representing the State in the capacities aforesaid, to abridge the right of defendant to vote, and the intent to abridge the right of 190,000 colored citizens of the State, because of the fact the defendant and the members of his race are ex-slaves, and their descendants, and that the condition of our previous servitude is the account on which the framers of the late constitution and statute aforementioned, in the name of, and by the authority of, the State of Mississippi, abridge the right to vote to defendant and his race, all being citizens of the United States.

Because the State of Mississippi, by its laws, has abridged the right to suffrage of one hundred and ninety thousand citizens, and has not had reduced its representation in Congress, accordingly therefor, the laws of the State under which this indictment is returned having been enacted by the

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legislature of the State, which legislature was elected since, and by, and under the enforcement of the constitution and laws of the said State, which constitution and laws aforesaid, abridge the right to vote of citizens of the United States to the number aforesaid, in the manner aforesaid, and for the purposes aforesaid, said law under which this indictment is returned is null and void, and the indictment should have been returned by a grand jury organized under the constitution of 1869, and statute of 1880. The defendant further charges that the provision of the State constitution in section 244, which requires that persons applying to vote, or to register, shall understand the constitution of the State, or any section thereof, when read to them, or give a reasonable interpretation thereof, coupled with the discretion provided for as afore complained of, to be used by the election managers in sec. 241, of the constitution, and the registrar of the county, as provided for in section 242, of the constitution, and considering the further fact, that the said State constitution, section 244 thereof, nor any other section or part thereof, designate to whose satisfaction the applicant for registration, or election, is to read the constitution, or to whose understanding the reasonable inter-
9 pretation thereof must be given by such applicant, and considering the further fact, that the constitution makers provided in that same section, 244, that a new registration shall be made before the next ensuing election after January 1st, 1891, which election was held in the State in pursuance of said sections of said constitution, and resulted in the election of a legislature composed of representatives of the minority of the voters of the State assembled in Jany., 1892, and the result of said election was brought about by the enforcement of the said provisions of said constitution, and this by a pretext of law did enforce the scheme, to abridge the rights of suffrage of a majority of the citizens, and otherwise qualified electors of the State, to the number aforesaid; the said persons so disfranchised by virtue of the laws of the State aforesaid are citizens of the State, and the United States, and that the said laws were so framed and enacted as complained of, for the specific purpose of depriving the majority of the citizens and electors of the State, of the full, free, and impartial enjoyment of the rights of the elective franchise, because of their previous condition of servitude, which condition of servitude is that of slavery formerly enforced in this State upon the defendant and his ancestors, being negroes, and the others who have been discriminated against as aforesaid being negroes, and ex slaves, their descendants, and the laws of the State by which the indictment herein was presented, and the grand jury which presented the said indictment, and the legislature of the State which enacted said laws, all are violative of the defendant's rights under the Federal Constitution, and therefore void of force and effect, and that the penalty upon conviction of this crime, murder, will under the law be death, and that thereby further proceedings under this indictment by this court, will be depriving the accused of his liberty and life without due process of law.

Further, the defendant is a citizen of the United States, and for the many reasons herein named asks that the indictment be quashed, and he be recognized to appear at the next term of this court.

HENRY WILLIAMS.
CORNELIUS J. JONES,
Atty. for Dft.

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10 STATE OF MISSISSIPPI, *Washington County:*

This day personally appeared before me the undersigned acknowledging officer W. K. Gildart, Henry Williams, who, being duly sworn, deposes and says that the facts set forth in the foregoing motion are true to the best of his knowledge, of the language of the constitution and the statute of the State mentioned in said motion, and upon information and belief as to the other facts, and that the affiant verily believes the information to be reliable and true.

his
HENRY x WILLIAMS.
mark

Sworn to and subscribed before me this the 15th day of June, 1896.
W. K. GILDART, *Clerk.*

Affidavits.

THE STATE OF MISSISSIPPI, *Washington County:*

THE STATE)
vs.) No. 4481. Murder.
HENRY WILLIAMS.)

This day personally appeared before me the undersigned, an acknowledging officer in and for said county, Henry Williams, who, being first duly sworn, deposes and says: That he has heard the motion to quash the indictment herein read, and that he thoroughly understands the same, and that the facts therein stated are true, to the best of his knowledge and belief. As to the existence of the several sections of the State constitution, and the several sections of the State statute, mentioned in said motion to quash, further affiant states: That the facts stated in said motion, touching the manner and method peculiar of the said election, by which the delegates to said constitutional convention were elected, and the purposes for which said convention was called, and the purpose for which said objectional provisions were enacted, and the fact that the said discretion complained of as aforesaid has abridged the suf-
11 frage of the number mentioned therein, for the purpose named therein; all such material allegations are true, to the best of affiant's knowledge and belief, and the fact of the race and color of the prisoner in this cause, and that race and color of the voters of the State whose elective franchise is abridged as alleged therein, and the fact that they who are discriminated against, as aforesaid, are citizens of the United States, and that prior to the adoption of the said constitution and the said statute, the said State was represented in Congress by seven Representatives in the lower House, and two Senators, and that since the adoption of the said objectionable laws there has been no reduction of said representation in Congress. All allegations herein as stated in said motion aforesaid, are true to the best of affiant's knowledge and belief.

his
HENRY x WILLIAMS.
mark

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Sworn to and subscribed before me this the 15th day of June, 1896.

WM. K. GILDART,
Circuit Clerk.

Filed this 15th day of June, 1896.

W. K. GILDART, *Clerk.*

STATE OF MISSISSIPPI, *Washington County:*

THE STATE)
vs.) No. 4481. Murder.
HENRY WILLIAMS.)

This day came before me the undersigned, an acknowledging officer in and for said county, John H. Dixon, who, being duly sworn, deposes and says that he had heard the motion to quash the indictment filed in the Henry Williams case, and thoroughly understands the same, and that he has also heard the affidavit sworn to by said Henry Williams, carefully read to him, and thoroughly understands the same. And in the same manner the facts are sworn to in the said affidavit, and the same facts alleged therein upon information and belief, are hereby adopted as in all things, the sworn allegations of affiant, and the facts alleged
12 therein, as upon knowledge and belief, are made hereby the allegations of affiant upon his knowledge and belief.

his
JOHN x DIXON.
mark

Sworn to and subscribed before me this the 15th day of June, 1896.

W. K. GILDART, *Circuit Clerk.*

Filed this 15th day of June, 1896.

W. K. GILDART, *Clerk.*

THE STATE OF MISSISSIPPI, *Washington County:*

This day personally appeared before me the undersigned, acknowledging officer in and for said county, C. J. Jones, who, being duly sworn, deposes and says that he has read carefully the affidavit filed in the John Dixon case sworn to by him (said C. J. Jones), and that he, said affiant, thoroughly understands the same, and adopts the said allegations therein as his deposition in this case upon hearing this motion to quash the indictment herein, and that said allegations are in all things correct and true as therein alleged.

C. J. JONES.

Sworn to and subscribed before me this the 15th day of June, A. D. 1896.

W. K. GILDART, *Clerk.*

Filed this 15th day of June, 1896.

W. K. GILDART, *Clerk.*

The court, after hearing the motion read and the introduction of the several affidavits filed in support of said motion, ordered the same overruled, to which ruling the defendant then and there excepted.

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Order overruling motion to quash.

STATE OF MISSISSIPPI)
vs. No. 4481.
HENRY WILLIAMS.)

This cause coming on to be heard and the defendant being in
13 court, upon motion to quash the indictment and affidavits in support of the same, and the court, after considering the same, doth order that said motion be overruled, and the defendant then and there excepted.

Whereupon the defendant filed his petition for a reroval of the trial of said indictment into the United States circuit court for the western division of the southern district of Mississippi.

Motion for removal.

THE STATE OF MISSISSIPPI, *Washington County.*

To the circuit court of Washington County in said State:

This petition respectfully shows unto this honorable court that Henry Williams, a negro and citizen of the United States, prays the transfer of the trial of the indictment filed herein against him, alleging the crime of murder, from the circuit court of this county, a State court, to the United States circuit court for the western division of the southern district of Mississippi, and the following reasons assigned, to wit: Because the laws by which the grand jury was selected, listed, summoned, and charged which presented the said indictment herein, charging him with the crime of murder, are repugnant to and violative of the terms, in letter and spirit, of the Federal Constitution, in this, that the constitution of the State of Mississippi prescribes specially in section 241 just what qualifications are required of citizens of the State to become electors, and in that same section of the said State constitution, adopted in 1890, it is provided that the election managers shall be produced satisfactory evidence that they, such applicants, have paid such taxes as required by the terms of said section, and in section 242 of said constitution the legislature is empowered to provide such registrations as it deemed proper for the enforcement of the terms of said sections, and in the exercise
of which authority the State legislature in 1892, enacted
14 section 3643, providing that the election commissioners of the county shall at a certain time there named appoint three persons for each election district to be managers of the election, and said legislature, by virtue of the authority conferred as aforesaid by said State constitution, enacted section 3644 of the code of 1892, making the election managers aforesaid judges of the qualifications of electors, and to examine on oath any person duly registered and offering to vote touching his qualifications as an elector; and thus the registration roll is not prima facie evidence of an elector's right to vote; but the list of persons having been passed upon by the various district election managers of the county should compose the registration books of voters, as mentioned in section 2358 of said code of 1892; and further, that no registration books of voters were prepared for the accommodation of the board of supervisors

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of the said county at the time and meeting thereof when the list of names were drawn by it with which the jury box of the county was charged at the time said grand jury which presented this indictment was, by the circuit clerk, in the presence of the chancery clerk and sheriff of the county, drawn; that the names so deposited in said jury box were drawn by said board, not from the registration books of voters, because there is no law of the State providing for the procurement of any registration books of voters of said county; and considering the terms of the State constitution, section 241, prescribing the requirement of persons to be electors, and section 242 thereof, prescribing the constitutional oath, the defendant charges that that part of section 241 of said State constitution which provides that satisfactory evidence must be produced to the election managers of the county, and that part of section 242 of said constitution which requires the applicant for registration in said county to subscribe to the oath to answer all questions propounded to him concerning his antecedents, so far as relate to his right to vote, and the granting to the legislature such authority as to authorize the enactment of the manner of appointment of election managers as aforesaid, without prescribing any qualifications for such managers, except that they must be "three persons," as provided in section 3643, and the granting to the legislature such authority as expressed in section 3644 of the statute aforesaid, making the managers of election at the various election districts the judges of the qualifications of electors, and empowering such managers to examine such persons as apply to them for the exercise of suffrage, touching their qualification as such electors, is but a scheme on the part of the framers of that constitution to abridge the suffrage of the colored electors in this State, on account of their previous condition of servitude, by granting a discretion to the said officers mentioned in said several sections of the constitution and statute of the State, adopted under the said constitution, the use of which discretion can be and has been and is being used by certain officers in this county and State, to the end designed and intended by the maker of said law at the time of the enactment thereof, and as here complained of, to wit, the abridgement of the elective franchise of the colored voters of the State and county aforesaid, thereby denying to the colored citizens of the county and State aforesaid the opportunity of being impartially listed and selected to serve as jurors in the circuit and other courts of the State and county, and this denial to them of the equal protection of the laws of the State of Mississippi is on account of their race and color, and as aforesaid, and the said discretion is not used with equal rigor against the white applicants for voting and registration by the officers of the law, who by said law are given such discretion and discrimination, thus resulting from the exercise of the said discretion in accordance with and the purpose and intent of the framers of the present constitution, which purpose and intent is emphasized by the fact that the election at which the delegates were elected to the constitutional convention which enacted said constitution was not a fair election in said county, and throughout the State, and was not conducted consistent with the policy and laws then in force at the time of said election; thereby the minority of the voters of the State, by the practices aforesaid, manipulated the election affairs and management so as to

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deprive the majority of the then qualified electors of their elective
16 franchise, by fraud and intimidation, for the purpose of securing a majority of white men as delegates to said convention. And the said election of delegates resulted in favor of the minority (being the white voters of the State). And the said constitutional convention was composed of white men only, with the exception of one delegate—being a negro—and though the constitutional convention was composed of one hundred and thirty-four delegates, said election therefor, which was held July, 1890, being managed and conducted as aforesaid, notwithstanding the fact that there were 69,000 whites, and 190,000 qualified negroes in the State, eligible to vote, only one of the latter race was permitted to serve in said convention proposing the abridgment of the suffrage of 190,000 colored voters of the State, and exempting the 69,000 whites by thus leaving to the discretion of certain officers therein named, or indicated, as to the right of such 190,000 colored voters said discretion provided in the said constitution as herein complained of, was prescribed by that convention, with the intent to so disfranchise said colored voters, because, be it known that the qualifications prescribed for voters of the State prior to the adoption of said constitution and under which the voters of the State being qualified thereunder to have voted on the ratification or rejection of said constitution had it been submitted to the popular suffrage of the State, which qualifications under the prior laws were, "All male inhabitants of this State, except idiots and insane persons and Indians not taxed, citizens of the United States, or naturalized, twenty-one years old and upwards, who have resided in the State six months, and in the county one month next preceding the day of election at which said inhabitant offers to vote, and who are duly registered according to law, and who are not disqualified by reason of any crime are declared to be qualified electors (Sec. 2, Art. 7, of constitution of Mississippi, adopted 1869). And that of the number qualified under said law at the time of the enactment of the present constitution and laws, there were one hundred and ninety
17 thousand colored citizens and sixty-nine thousand whites, and though the said new constitution adopted in 1890 was enacted with the purpose and intent to abridge the suffrage of the majority of the electors of the State, and said constitutional convention was composed (with one exception) entirely of white men, representing the views and sentiments of the minority of the qualified electors of the State. The members of that constitutional convention arbitrarily refused, and for the purpose and intent aforesaid failed to submit the present organic law to the voters of the State for their approval, but declared it adopted, and ordered therein an election to be held immediately thereunder for all district and county officers throughout the State, which election for said officers, including members of the legislature, was ordered to be held under an ordinance of that convention, which election was held in Nov., 1891, and the legislature of 1892 adopted the statute herein complained of, and the enforcement of the provisions aforesaid of the said State constitution and statute resulted in discrimination against the race of the defendant—being that of negro—and by virtue of the exercise of such discretion as provided for in the constitution and statute aforesaid, which

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discretion is to be exercised by certain officers therein named, was purposely provided in the organic law by the framers with the specific intent to discriminate against the colored citizens of the State, who, other than the use of said discretionary power by said officers with the intent aforesaid, said colored citizens would satisfy the other requirements even of the new constitution of 1890 and statute enacted thereunder.

The accused is, by force of the laws and acts of the officers in the enforcement thereof, deprived of that equal protection of the laws of the State to which he is entitled under the 14 amendment to the Federal Constitution because of the discrimination against him and the members of his race as aforesaid on account of the fact he and the members of his race are ex-slaves and the descendants of ex-slaves, which is a
18 state of servitude previously existed in this State, and because of their having been slaves in this State formerly, and the descendants of such former slaves under the subjugation of the white race, and the color black, is the condition which caused the framers of the late State constitution to provide in that instrument a certain discretion aforementioned, and the condition of defendant and the balance of the one hundred and ninety thousand negroes aforesaid in said State, which caused said members of the said constitutional convention to delegate to the legislature of the State the power to enact certain laws to enforce the sections of the organic law aforesaid, is the previous condition of servitude of the defendant and the male citizenship of his race which caused the legislature of 1892 to enact section 3643, and section 3644, of the code of 1892, in strict enforcement of the scheme purposed by the framers of the constitution aforesaid, and the enforcement of all these laws for the reasons and purposes aforesaid, that the defendant has been by this proceeding deprived of the immunity prescribed in the letter and spirit of the Federal Constitution, 14th amendment thereof. And the enforcement of the State constitution and statutes aforesaid, and the exercise in the manner, and to the end and purpose and intent aforesaid, the certain discretion purposely provided in the State constitution to be exercised by certain officers therein mentioned, abridge the rights of elective franchise of defendant and the rights of one hundred and ninety thousand negroes, citizens of the United States, and such results from the enforcement of the State law, which law was enacted by the constitutional convention aforesaid, which constitution was by that convention adopted, and the power so granted the State legislature on the part of those representing the State in the capacities aforesaid, to abridge the right of defendant to vote, and the intent to abridge the right to vote of the one hundred and ninety thousand colored citizens of the State, because of the fact that the defendant and the members of his race are negroes and ex-slaves and the descendants of ex-slaves, and that condition of previous servitude is the account on which the framers of the late constitution being
19 entirely representatives of the white race as 'foresaid, assuming to act, and did act, in the name of the people of the State of Mississippi, where in fact that body only represented the minority of the citizenship of the State as aforesaid, yet that constitution enacted, as it is here complained of, and the statutes thereunder enacted as here complained of abridge the rights and privileges and immunities of the defendant and the number of his race in said State aforesaid—they being citi-

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zens of the United States—and the enforcement of the State laws aforesaid, is repugnant to defendant's rights under the Federal Constitution. Further the defendant says: That the State of Mississippi, by its laws, has abridged the right to suffrage of one hundred and ninety thousand of its citizens as aforesaid, and has not had its representation in Congress reduced accordingly, therefore the laws of the State, under which this indictment is presented having been enacted by the legislature of the State which legislature was elected since, by, and under the enforcement of the said constitution which is complained of, in the manner aforesaid, and for the purposes aforesaid, and said laws authorizing the election of the legislature of 1892, the acts and laws of said legislature and the indictment herein having been returned by and under the laws of the said legislature, all are null and void of legal effect upon the rights of the defendant, for the reason the enforcement of any and all such laws, which laws were enacted by the legislature which was elected as aforesaid, is violative of the letter and spirit of the Federal Constitution. The defendant further charges that the provisions of the constitution aforesaid, section 244 thereof, which requires that persons applying for the exercise of the elective franchise in the State shall understand the constitution of the State, or any section thereof, when read to them, or give a reasonable interpretation thereof; this section of said constitution, coupled with the discretion purposely provided for therein as aforesaid, and herein complained of, to be exercised by the election managers in section 241, and the registrar being vested with such discretion as complained of in section 242 of said constitution, and considering the further fact that the said State constitution, section 244 thereof, nor any other section thereof, nor the statute of the State designates by any positive provision to whose satisfaction the applicants for the exercise of the right of suffrage shall read the said constitution, or any section thereof, or to whom a reasonable interpretation thereof must be given by such applicants, and considering further the fact that the constitution provided that a new registration should be made before the next ensueing election therein provided to be held after January first, 1891, which election was held in pursuance of said sections of the constitution November, 1891, and resulted in the election of a legislature composed of the representatives of the minority of the voters of the State, and the result of said election was brought about by the enforcement of the said provisions of the said constitution as complained of, and thus by a scheme to abridge the suffrage of a majority of the citizens and voters of the State by the preconceived manner in which the said discretion should be exercised by those thus vested with it, in accordance with the purpose of the framers and enactors of said constitution at the time of its adoption, the enforcement of said laws in said manner and for said purposes did result in the abridgement of the rights of suffrage of a majority of the voters of the State to the number aforesaid, all being citizens of the United States; and said laws were so framed as aforesaid, and adopted as aforesaid, for the specific purpose of thus depriving the said majority of electors of the State of the full, free, and impartial enjoyment of the rights of elective franchise, because of the previous condition of servitude, which condition of servitude is that of slavery, formerly existing and enforced as aforesaid in this State, upon

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the defendant and his ancestors, being negroes, and the others who have been thus discriminated against as aforesaid are members of the defendant's race and color, black, and the laws by the State of which
21 the indictment herein was presented, and the grand jury which presented the said indictment, and by which the petit jury, which is summoned and here returned, and by which defendant is sought to be tried, and the selection of a special venire, if claimed, and the legislature of the State which enacted the said laws, being under the constitution as complained of, and relator can not enforce his right to full legal trial in said State courts, all which laws, singly and collectively, are violative of the defendant's rights under the Federal Constitution, and therefore void of force and effect; therefore the defendant prays that the trial of the said indictment be removed from the circuit court of Washington County, Miss., the court of original jurisdiction in the State, to the United States circuit court for the western division of the southern district of Mississippi, as the law directs.

his
HENRY x WILLIAMS.
mark.
CORNELIUS J. JONES,
Atty. for Dft.

STATE OF MISSISSIPPI, *Washington County:*

This day personally appeared before the undersigned, an acknowledging officer of the State and county aforesaid, Henry Williams, who, being duly sworn, says that the facts set out in the foregoing petition are true, to the best of his knowledge, as to the terms and purposes of the law, and belief on information as to the other matters, which information is verily believed to be true as stated.

his
HENRY x WILLIAMS.
mark.

Sworn to and subscribed before me this the 15 day of June, 1896.
W. K. GILDART, *Clerk.*

Filed this the 15th day of June, A. D. 1896.
W. K. GILDART, *Clerk.*

22 *Order overruling motion for removal.*

STATE OF MISSISSIPPI }
vs. } No. 4481.
HENRY WILLIAMS. }

This cause coming on to be heard, and the defendant being in court, upon petition for the removal of the trial of said indictment from the State court to the United States circuit court for the western division of the southern district of Mississippi, and the court being so advised, doth order that said application be denied. And the defendant then and there excepted, and tenders this his special bill of exceptions, to be made a

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part of the record in this cause, and the same is so ordered by the court.

Signed this the 19th day of June, 1896.

R. W. WILLIAMSON,
Judge of the Fourth Judicial District of Mississippi.

Filed June 19th, 1896.

W. K. GILDART, *Clerk.*
By J. A. SHALL, *D. C.*

General bill of exceptions.

Thereupon, on the 16th day of June aforesaid, the said cause came on to be tried, the defendant having entered plea at a former day of said term, whereupon the following testimony was introduced on behalf of the State:

THEOPHILUS BROWN, witness for the State, being sworn, testified as follows (colored):

Q. Do you know Henry Williams?
A. Yes, sir; there he is there.
Q. Did you know Eliza Brown?
A. Yes, sir; she was my sister.
Q. Where is she now?
A. She is dead.
Q. How do you know she is dead?
A. Because I found her; I found her down there in a house lying on the floor covered up by some dirty clothes.
Q. When?
A. It has been a good while; I do not know what day it was; it is down that street yonder.

23 Q. In this town of Greenville, in Washington County, State of Mississippi?

A. Yes, sir.
Q. How did you happen to find her there?
A. I went in there to hunt for a pair of my pants.
Q. What did you find?
A. I went there and was looking around in the rags for my pants I had been wearing and I looked there and uncovered her head, and that is all I knows about it.
Q. She was dead, was she?
A. Yes, sir.
Q. Well, when you got there was the house locked?
A. The front door was locked.
(Objection by defendant; overruled; exception by defendant.)
Q. How many rooms was there in that house?
A. Three.
Q. Which room was she in?
A. She was in the little outside room.
Q. Who lived in that house with her?
A. Me and my father.
Q. Did anybody live with her in that house?
A. Yes, sir; me and my father stayed there, and Henry Williams.

UGH POOR COPY

Q. He stayed there too, did he?
A. Yes, sir.
Q. When was the last time you saw your sister before you found her dead?
A. I had not seen her before until that Christmas morning, and she was coming down here to *my* brother's house.
Q. How long was that before you found her dead?
A. That had been a good while; I could not exactly tell how long it had been.
Q. Two or three days?
A. Yes, sir; just about.
Q. Were you staying in the house then, the same house?
A. Yes, sir.
Q. The last time you saw her was two or three days before you found her dead?
A. Yes, sir.
Q. Where was that?
A. Where I found her dead?
Q. No; the last time you saw her before that.
A. The last time I saw was here at my brother's.
Q. Where was that you saw her?
A. I saw her up here at home.
Q. Up at her house?
A. Yes, sir.
Q. Did you go over there, or what?
24 A. No, sir; I stayed there and he fixed my breakfast for me.
Q. Who did?
A. Henry Williams, and I got up and went on up town, and in coming back there, when she came back from down to my brother's house, and I was out there on the street playing with the boys, had just come back there from town, and I came back there and she was telling my father about——
Q. Never mind what she told your father. Did you see her; that was about Christmas time?
A. Yes, sir.
Q. Well, after you saw her that time, now can you say you did not see her any more for two or three days, and when you did see her she was dead?
A. Yes, sir.
Q. Now, during that time, from the last time you saw her until you found her dead, were you staying in that house every night?
A. Yes, sir.
Q. You went there and stayed in the house every night, did you?
A. Yes, sir.
Q. Who else stayed in there every night?
A. Didn't nobody stay in there after this but my father and me.
Q. You say when you went there the house was locked, just now?
A. Yes, sir.
Q. How did you get in the house?
A. I went in the back door, but this was in the night when I came, about 7 o'clock.

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Q. Did you stay there any in the daytime?
A. No, sir.
Q. When was the last time you saw Henry Williams before you found your sister dead?
A. I never seen him any more until that morning after he left here.
Q. What morning after he left here?
A. That Christmas morning. It was Christmas morning or Christmas evening, one, I disremember now.
Q. Did you ever see your sister after Henry left until you found her dead?
A. Yes, sir; she came back there.
Q. After Henry left.
A. Yes, sir.
Q. You never saw Henry any more until when?
A. I never saw him any more until they brought him in the courthouse.
25 Q. Did you ever see Henry after you found your sister dead? Did you ever see him after that?
A. No, sir.
Q. You had not seen your sister for a long time—it had been since you had seen your sister when you found her dead?
A. I could not exactly tell how many days.
Q. About two or three days, or week, or month, or how long?
A. It had not been more than a week, if it had been that long.
Q. Well, now, can you remember the exact day the last time you saw your *your* sister? Was it Christmas Day?
A. I could not exactly tell; I don't remember.
(Objection; overruled; exception by defendant.)

Dr. A. BRUCE, witness for the State, being sworn, testified as follows (white):

Q. Do you know Eliza Brown, or did you know her in her lifetime?
A. No, sir; I did not.
Q. Did you see her after she was dead?
A. Yes, sir.
Q. What is your profession?
A. I am a physician.
Q. Did you make an examination of her body?
A. Yes, sir; before the coroner's jury.
Q. State what the condition of the body was when you found it, when you examined it.
A. When I first arrived she was in the room; I do not remember the street, but the first block this side of the De Sota oil mill; and there is a long house facing north, and then in here is a little side room, 8 by 10, or something like that; there is a window in here, and there is the front room and there is the kitchen [indicating]. The body was lying in this corner on the flat of her back; this is the front room on the north, and this is the door leading from the kitchen; this side room was a small room on the southeast corner, and this is the door entering from the kitchen, and there is also a door in the south from the kitchen, and then

GH POOR COPY

there was a door in the north end of the side room on the south-
26 east corner. When I arrived there the body was lying with its head to the east, where you see this mark, in that small room on the southeast corner, covered up partially with rags. The face had been uncovered, and she was lying flat of her back, with her hands in this position, as well as I can remember [hands lying across the abdomen]; then they removed the body to the front, to the east of the front room fronting north, and in front of the small room on the southeast corner, and they held the inquest, and I made an examination of the body, as thoroughly as I could, and found enough to form my opinion; and the best of my opinion is that the woman died from strangulation—was choked to death. The imprint of the fingers were very plain on her throat; on the right-hand side was the mark or scratch about as large as would be made with the thumb nail, a man that would catch them in this position with the right hand, and there was two or three finger-nail scratches, which it was my opinion was on the left side of the neck. This is all I found on the body. There was no bruises on the head, and I examined her thoroughly.

TOM JONES, witness for the State, testified as follows (colored):

Q. Do you know Henry Williams?

A. Yes, sir.

Q. Did you know Eliza Brown, that he is charged with having killed?

A. Yes, sir.

Q. Did you see her after she was dead?

A. Yes, sir; I summoned the coronor's jury and held the inquest.

Q. Did you go there to the house and make an examination?

A. Yes, sir; after I was notified to summon a jury to hold the inquest, and after I summoned the jury, then I proceeded to the house.

Q. State what you saw there and what you found.

A. Well, when I got to the house I found her in a little room, the front door being oocked. The door that led into the little room was open, and I pushed back some old clothes, &c., and there I found her dead.

Q. Did you make any further investigation?

A. Yes, sir; we searched the house, myself and the jury, and
27 so on, and we found the bed turned up, and then we found some of Henry's clothes there and a pair of pants; we looked in the pocket of them and found some tobacco, and found a key that fitted the front door.

Q. Was the front door locked?

A. Yes, sir; it was locked and there was no key to it, and the old man was there and could not get in.

Q. You found the key to the front door on Henry's pants pocket?

A. Yes, sir.

Q. What sort of pants were they?

A. They were dark pants, but I forgot whether jeans or some other stuff; but they were dark.

Q. Was there anything peculiar about the pants?

A. Yes, sir; they had feathers on them, I suppose, from the bottom up to the knees. Where she was lying there were a great many feathers

Mr. Anderson taken the key out of the pants pocket and gave it to me, and I had the key ever since.

Q. When was that, Tom?

A. It was some time in December, just after Christmas Day, I forget what day of the month it was. I think it was on a Saturday when I found her and held an inquest; I think it was on the 26th or 27th.

Q. When had you seen Henry Williams before that—at any time?

A. It had been several days before I saw him—along about Christmas eve I think I saw him up town. I am satisfied I saw him up town Christmas eve.

Q. Where did Henry live?

A. I do not know. I seen him here in town. I did not know even where he was staying.

Q. You say the last time you saw him was several days before this inquest?

A. No, sir.

Q. When was the next time you saw him?

A. I never saw him until he was brought from Shaws Station here and put in jail.

Q. That is all you know about it?

A. Yes, sir; I know I looked for him after the coronor's inquest was through, and there was a warrant issued, and I hunted for him and could not find him.

28 Cross-examination:

Q. When you saw the body, was that before or after Dr. Bruce had been called and had examined the body under the direction of the coroner's inquest?

A. I saw it before Dr. Bruce examined it. I summoned Dr. Bruce myself.

Q. Were any other persons with you at the time?

A. Yes, sir; there was a good number of people there. I could not tell when I got there; the door was closed; there was nobody in there where the dead body was. Myself and the jury and Mr. Smith and several others proceeded in to make an examination of it.

Q. The back door was open when you got there?

A. Yes, sir.

Q. When you got there, there was a number of persons there, but none in the house when you got there?

A. No, sir.

Q. They may have been in there and out before you got there, and you might not have known it?

A. Certainly.

Q. After you examined the body, did any one else enter the house after that, up until the time of the coroner's inquest was held, to your knowledge?

A. No, sir; nobody did not but the coroner's inquest, that is all; we examined it and found embrasures here where she was choked, and the stocking on this leg and garters had been pulled off and pulled down over the shoe on this left leg.

HUMPHRIES. You say the stocking had been pulled down?

A. Yes, sir.

ROUGH POOR COPY

Dr. BRUCE recalled.

HUMPHRIES. You stated just now you examined this body; can you state how long that body had been dead when you made the examination?

A. Well, it may have been thirty-six hours and it may have been little longer; it was cool weather and of course it would to tell; of course bodies don't decompose in cold weather like they do in warm weather. It may have been longer, as much as forty-eight hours, but I could not say positively.

29 ELLA HICKS, sworn as a witness for the State, testified as follows (colored):

Q. Do you know Henry Williams?

A. Yes, sir.

Q. Is that him there?

A. Yes, sir.

Q. Did you know Eliza Brown, the woman he is charged with having killed?

A. Yes, sir; Elizabeth Brown.

Q. When was the last time you saw Elizabeth?

A. I saw her Christmas day, and saw her the Thursday after Christmas. Henry were also over there to mama's, next door.

Q. Where does your mama live?

A. Over here back of the jail.

Q. Henry was over there with her when?

A. A Thursday.

Q. What day was Christmas, do you remember?

A. On Wednesday.

Q. And the day after Christmas he and Eliza were at your mother's house?

A. Yes, sir; we both lived together.

Q. What time of day was it?

A. As near as I can remember it was about 12 or 1 o'clock.

Q. What were they doing there?

A. She was standing on the gallery when I seen her and he was in the house.

Q. Did they stay there?

A. They left there together, and the last time I seen them they were going over there and got as far as the railroad; that is the last I seen of her. I was talking to her as she came out of the gate, and I stood there until they got as far as the railroad, and went on in the house, and they came on this way.

Q. That was on Thursday; now, when was the next time you saw Eliza?

A. I did not see her any more until Saturday morning, when she was found dead. I went up there and she was in a lit/le room, wrapped up in some old rags and blankets, and it looked like she had something in her mouth white.

Q. When was the last—when was the next time you saw Henry Williams, after they left there together that day?

A. I did not see Henry no more until I seen him in jail over there.

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Q. Where had Henry lived up to Christmas, and where was he living then?

A. He was living with Lizzie at that house, because Eliza washed his clothes.

Q. You understand me, was Greenville his home?

A. Ever since I have been knowing him he has been living here.

Q. How long has that been?

A. About three years, I reckon, when we had the trial up here before. It was the first time I ever seen him to know that was him.

Q. You say they found the body there Saturday; was Henry there then?

A. I never seen him.

Q. When was the next time you saw him?

A. I did not see him any more until I seen him in jail.

Q. How long afterwards?

A. I do not know, sir; I never kept no dates.

Q. About how long, a week or a month?

A. Between a week or two weeks, I disremember; I did not take any notice of it, because it did not interest me whether they were at home or not.

GUS MILES, witness for the State, being sworn, testified as follows (colored):

Q. Do you know Henry Williams?

A. Yes, sir.

Q. Did you know Eliza Brown?

A. Yes, sir; I knowed her.

Q. Do you remember the time they found Eliza dead over there in the house?

A. Yes, sir.

Q. Had you seen her before that time?

A. Yes, sir.

Q. When was the last time before that time that you saw her?

A. Thursday, I think.

Q. What time Thursday?

A. Thursday afternoon.

Q. Whereabouts did you see her?

A. At the saloon.

Q. Which saloon?

A. Mr. Wray's.

Q. Where is that?

A. At the depot.

Q. Who was with her, Gus, if any one, when you saw her?

A. Henry Williams.

31 Q. Which way did they go from there?

A. Went over towards him.

Q. What do you mean by towards him?

A. Down to their house, down the railroad.

Q. Down to the house where this woman was found dead?

A. Yes, sir; he stopped over there a little while and talked to me about 5 or 10 minutes.

POOR COPY

Q. What did he say? He stopped there a while and talked to you.

COURT. What day was it?

A. Thursday.

HUMPHRIES. What was it?

A. He told me that he had a question to ask me, and I told him all right. He said he thought I was a friend of his, and he wanted to ask me about it, and I told him all right; he says somebody told him that she had taken a man.

COURT. Let the jury retire.

(The jury retired.)

Q. What did he say to you, now?

A. He said that she had taken a man home, and told him to ask me about it, if I sold a half pint of whiskey to carry there to him. He said he works hard and gives that woman his money and she was lying around there with another man, the God dam bitch; he was going to fix her and leave her.

(Objected by defendant as irrelevant; overruled; exception by deft.)

Q. What was it he said, now?

A. He told me that he works hard and made his money and gave it to that woman, and she was lying around with men; that he would kill the God dam bitch and leave town for it; that is what he told me.

Q. What else did he say to you, if anything, in that conversation when he came up there; what was the first thing that he said when he came?

A. He told me he wanted to ask me a question; that he taken me to be a friend of his, and I told him when he first asked me, "I am busy right now, but I will be through in a few minutes," and when I got through I said "all right Henry," and he says, "Did you sell Eliza a half pint of whiskey?" I said "No." He said, "Somebody told me you sold her a half pint of whiskey and she took a man and carried
32 him over to Mary Page's." I told him "No; I did not see it, and I did not sell him no whiskey."

Cross-examination:

Q. What is your occupation?

A. I am over there at the saloon with Mr. Wray.

Q. How long have you known Henry Williams?

A. Four or five years.

Q. How long did you know Eliza Brown before her death?

A. About a couple of years.

Q. Did you know any relation existing between Eliza and Henry; did you know if any such thing between Eliza and Henry, as man and woman sleeping together, or anything of that sort?

A. That is what he told me.

Q. You do not know anything more than what he told you?

A. No, sir.

Q. Had you any conversation before that time, before that day, of a familiar nature?

A. No, sir.

Q. Had you and him associated together in any way?

A. Yes, sir; when he was out in the country we did, but not here in town.

BLEED THROUGH

Q. What place in the country?

A. Out on the Wilezinski place.

Q. Did you see this Brown woman after she was dead?

A. I did.

Q. How long was it from the time you saw her alive until you saw her dead?

A. I saw her alive on Thursday and seen her dead on Saturday.

Q. Do you know how long she had been dead when you saw her?

A. No, sir; I do not know. I know she was not dead on Thursday.

Q. What time was it Saturday when you saw the dead body?

A. I suppose about eleven o'clock.

Q. Were there any other persons at the time?

A. There were over fifty there.

Q. Did you examine the body?

A. I did not. Mr. Harry Smith examined it.

33 Q. Where was the body when you saw it?

A. Lying in the room wrapped up in a lot of rags.

Q. Did you see her face?

A. After we pulled the rag off.

Q. Who pulled the rag off?

A. Mr. Harry Smith did.

Q. What sort of rags were they?

A. Old dirty clothes; just up like a lot of old dirty clothes piled up in a corner.

Q. Were they wearing clothes or bed clothes?

A. Wearing clothes.

Q. You say that you had seen this woman and Henry at the saloon?

A. Yes, sir.

Q. How long afterwards you saw him and the woman together was it that you and he had the conversation?

A. We had the conversation the same evening.

Q. About how long afterwards, from the time that you saw them together, to the time of the conversation?

A. When they walked up there he told her to stand there a few minutes until he came in and saw me, and she was standing out in the corner waiting for him, and he talked to me, and she said, "Come on, Henry, let's go;" and he says, "I am not ready yet."

Q. What did Henry tell you about the whiskey?

A. He asked me if I sold her a half pint of whiskey?

Q. What time did he ask you if you sold it to him; what time did he infer that you sold him the whiskey?

A. It was on Tuesday that he was speaking about the whiskey.

Q. Did he tell you then that it was Tuesday that he was speaking about?

A. Yes, sir; he said it was day before yesterday; he did not have to call it when he said day before yesterday, because I knowed it.

Q. The woman was standing a short distance off?

A. Yes, sir.

Q. What seemed to have been his relation with her; were they friendly as usual?

A. He seemed to talk like he was very mad that day.

POOR COPY

Q. Did he talk that way to you or seemed to act that way towards her?
A. Talked that way to me. I don't know what he said to her.
34 Q. You say when they left they went down towards their house?
A. I did not go with them.
Q. You say they went towards their house?
A. Certainly they did.
Q. Did they walk together or did he go along if quarreling?
A. He was in front and she behind. She came up and said, "Henry, let's go," and he said, "You go ahead; I am coming."
Q. That is all you know about Henry in connection with the killing?
A. Yes, sir; that is all.
Q. You do not know who killed her?
A. No, sir.
Q. When did you next see Henry?
A. When Mr. him in on the night train.
Q. Where were you at the time?
A. I was at the saloon and went to the train to see him. I heard they were coming with him.
Q. Who told you?
A. A woman came here and told it that they were coming with him, and he came anyhow on the train.
Q. What time of day Saturday was it when you went down there?
A. About eleven o'clock. We did not have any watch to see the time, but I suppose it was that.
Q. You know the time of day without a watch?
A. No, sir; I do not. I have to look at a watch, but I supposed it was about 11 o'clock.
Q. And a good number of persons were there when you got there?
A. Yes, sir.
Q. Who else was with you at the time this man had the conversation with you at the saloon?
A. He had a private conversation with me.
Q. Nobody but you and him together?
A. No, sir.

ADDIE BROWN, sworn as a witness for the State, and testified as follows (colored):

Q. Do you know Henry Williams?
A. Yes, sir.
35 Q. Did you know this woman, Eliza Brown, that he is charged with having killed?
A. Yes, sir; she was my sister-in-law and my husband's sister.
Q. Did you see her after she was dead?
A. Yes, sir.
Q. What day of the week was that, do you remember, that you saw her?
A. On Saturday when I seen her after she was dead.
Q. When was the last time that you had seen her before that?
A. It was on Thursday.
Q. Where was she then?

BLEED THRO

A. At my house, right over yonder.
Q. Behind the jail?
A. Yes, sir. She came over there, and Henry, both.
Q. Henry was there, too?
A. Yes, sir. He came back in the kitchen where I was cooking and spoke to me; and I was cooking and I was expecting father from Hollandale, and I was cooking dinner and he came in there and said——
(Objection. Overruled. Exception by defendant.)
He came in the kitchen where I was and he said, "I heard Tom had a fuss up at the depot this morning" (talking about my husband). I said, "No, he did not have no fuss at the depot." Then he showed me a pistol he held in his coat pocket that way; said, "I borrowed a pistol this morning." I said, "Don't show it to me; I am afraid of pistols in that way;" and he did not say any more and went out. She started home, and I asked her where she was going so quick.
(The court ruled out this entire conversation.)
Q. Did she go home?
A. She left my house to go home.
Q. Did she go by herself when she left?
A. Henry left with her.
Q. When was the last time you saw her—which way did they go?
A. When I saw her leaving there she came on up the street to go home.
Q. The last you saw her alive, when she came on up the street, Henry was with her?
A. Yes; Henry and another young man; I do not know who he was.
Q. Did they go to your house together?
A. Yes, sir; they came there together.
Q. And went away together?
A. Yes, sir. She had told me about her and Henry's fuss.
36 Q. We just want to know about him now. This man was not present when she told you that—when she told you anything?
A. No, sir; not all the time.
Q. What she told you was when she was not there?
A. Yes, sir; he was not there all the time.
Q. Did you have any conversation with her in Henry's presence at all?
A. That morning he left my house? Yes, sir; I was talking with her, first on' thing and then another, no certain things, and I asked her what time she was coming back; she told me that evening.
(Objection as incompetent. Sustained. Ruled out.)
Q. Did she come back that evening?
A. No, sir; she did not come back that evening.
Q. Did she ever come back?
A. No, sir; she never come back.
Q. The next you saw her, you say, was Saturday?
A. Yes, sir.
Q. Did you notice how Henry was dressed that day?
A. No, sir; not in particular; I did not take any notice in men's clothes much, anyhow; never do.
Q. You do not remember what kind of pants he had on?

GH POOR COPY

A. Had on black-looking pants.
Q. Would you know the pants if you were to see them?
A. I do not know in particular, but just they were black pants.

STELLA HOLMES, witness for the State, being sworn, testified as follows (colored):

Q. Do you know Henry Williams, this defendant?
A. Yes, sir.
Q. Did you know Eliza Brown in her lifetime?
A. Yes, sir.
Q. When was the last time you saw Eliza Brown?
A. I saw Mrs. about 12 or half past twelve o'clock on Thursday after Christmas.
Q. Where was she when you saw her?
A. She was on the front gallery.
Q. At her house?
A. At her own house.
Q. Who was there with her, if anyone?
A. Henry Williams was there.
37 Q. When was the last time you saw her after that?
A. I do not remember seeing her any more after that.
Q. Did you see her after she was dead?
A. Yes, sir.
Q. The next time you saw her after that was——
A. Saturday morning after they found her dead.
Q. Was Henry there then?
A. No, sir.
Q. When was the next time you saw Henry Williams, after you saw them sitting on the gallery that day?
A. I saw them both together that day and never saw neither one after that.
Q. That is where they lived; Eliza Brown and Henry Williams lived there in that house, didn't they?
A. Yes, sir.

I. M. MUCKLE, witness for the State, sworn, testified as follows (colored):

Q. Your name is I. M. Muckle?
A. Yes, sir.
Q. Did you know Eliza Brown?
A. No, sir.
Q. Do you remember the time she is said to have been killed?
A. About the time—along about Christmas.
Q. You remember that occasion of the inquest they held over her?
A. I was not at the inquest, but heard of it.
Q. Had you seen Henry Williams before that time?
A. I only saw him one day in the Christmas week up in town.
Q. When was the next time you saw him after that?
A. The next time I saw him was at Shaw's station; about two miles from the station, west of Shaw's.
Q. How long after this inquest?

BLEED THROUG

A. I think it was on the 9th day of Jan.

Q. Did you see him at Shaw's?

A. He was not at the station, but at a house called Howerd Coleman's house, on Dr. Mason's plantation.

Q. What were you doing up there?

A. I went up there looking for him.

Q. Where was he when you first saw him?

38 A. He was up in the loft, looked to me about four of five plank wide, about as wide as the desk, and the joints broke, lying up with his stomach in the loft.

Q. Tell the jury about it.

A. I went up there and got there on the 8th of Jan., and I went out in the country a piece with some people that knowed Howard Coleman's people, and asked if they had seen anything of him; they told me they had saw him on Tuesday, I think it was, about a week from the day I was up there; I won't say a week, but they said I saw him last Tuesday is what they told me, and I asked them where they saw him.

Q. Never mind what they told you.

A. Well, I went there to Dr. Mason's store that night, and asked him about——

Q. Tell what you did.

A. I went down there to Howard Coleman's house after we found out where Howard Coleman lived.

Q. You say Howard Coleman is kin to this man?

A. He is said to be some of his relation some way or another, said to be kin to him one way or the other, and I goes down there, me and Mr. Peacock, and he went around on the back side of the house, and I went up in front of the door and told them to tell Henry Williams to come out there.

COURT. Was Henry in that house?

A. Yes, sir.

Q. Go along and tell it.

A. They said Henry was not there. I said, "Tell Henry to come out of there," and they said "He ain't here and has not been here." I said, "Open that door," and they failed to open the door, and I advanced up on the steps and Lou Gay Coleman came and poked his head out of the door, and he came out and pulled the door too behind him. I said, "Open the door." He said, "You can go in and open it," and I heard a mighty rustling in the house, and I went to the door and got the door wide open and went in and commenced looking for him, and looked under the bed, turned up the mat'russ and looked under that and some barrels they had there, and Mr. Peacock examined the other room, and he said, "That son of a bitch has gone," so I came

39 on in the room where he had been looking, and coming up the side of the house I saw a plank move and I jumped down on the floor and said, "Come down from there, Henry," and he says, "All right, sir." When he came down I threw my pistol down on him, and told him to throw his hands up, and he said, "That is all right; you have got me, gentlemen;" and we tied him and brought him out from the house apiece and read the affidavit to him, and I asked him if he knew anything about the death of this woman and he says, "No; yes;

POOR COPY

I know something about it, but I did not kill her." He says, "Another fellow killed her," and I said, "Who was it?" He said, "I can't tell you who it was right now." I said, "Were both of you in the house and you do not know who this fellow was?" He said "No." I said, "Didn't you try to keep him from killing this woman?" and he said "No." I said, "What is the reason you did not go up town and get an officer and capture the fellow?" He said, "I did not want to have anything to do with it; I had been in a case of that kind before." I said, "How came you to leave?" and he said, "I went off until they got the thing sorter settled." Well, we went on back to town, and we had been across a long bridge about a hundred feet long, and we met Mr. Mason's agent, and Mr. Peacock stopped there and talked with him and me, and Henry walked on up towards the station. I said to him, I said, "Henry, why don't you tell me the truth about this thing?" I said, "The truth will do you more good than that." I said, "What you told me back yonder ain't worth anything; there ain't a man in the State of Mississippi will believe that." He said, "I will tell you the truth about it, Muckle, but I don't want to tell you before that white man." I said, "He is back yonder now; now tell me." He said, "We fell out; our falling out was about fifteen dollars." He said, "We had fifteen dollars that we had made at Refuge picking cotton, and I asked her for some money to go to town to a ball, and she gave me fifty cents, and when I came back that night," he says, "there was a man run out of the house at the back door," and he run around to see who it was, and he says "he saw the fellow, but he could not make out who he was going through the pickets, and," he said, "he came back in the house and said, 'Eliza, what kind of God damn stuff is this you are giving me?' She says, 'I will give you any kind of God dam' stuff I choose to give you, and, furthermore, I laid off to kill you, and I am going to do it,'" and, he says, "she picked up the pistol and started at him with it and he knocked her down, and she raised the second time and started to him and he knocked her down again and put his foot on the pistol and got up on her and choked the very stuffing out of her," is what he told me.

Cross-examination:

Q. How long were you at Shaw's before the train came for you to come down on?

A. I suppose it was between 9 & 10 o'clock when I captured him, and I think the train came down that afternoon at 3 o'clock, as near as my remembrance serves me.

Q. Did you keep him at the depot during that time?

A. Well, no; I went over to a boarding house and gave him his breakfast, and we sat out on a walk that crossed a ditch.

Q. Did you have any conversation with anyone concerning Henry Williams' case while you were there other than the officer that assisted you in arresting him? Did you have any conversation with anybody touching the case?

I do not remember having any conversation except with one fellow up there—that is, a friend of Henry's.

Q. Who is he?

A. I think his name was Lewis.

BLEED THR

Q. Did you have any conversation with Gay Coleman concerning this matter?

A. No, sir.

Q. Have you made an application for a reward for capturing Henry?

A. Well, I do not know. You mean before I went up there? I suppose I have; yes, sir.

BODDIE. You hope to get it, too; don't you, Ike?

JONES. Is it not a fact you told Lou Gay Coleman, at Shaw's station, that your object in pursueing Henry was to recover this reward, and that whether he said he committed this offense or not that you intended
41 to charge him with it in the court?

A. No, sir.

(State rests.)

The following testimony was introduced for the defendant:

LOU GAY COLEMAN, sworn as a witness for the defendant, testified as follows (colored):

Q. Do you remember when Henry Williams was arrested at Shaw's station?

A. Yes, sir.

Q. Where was he arrested; what house?

A. He was arrested at my father's.

Q. Were you present when he was arrested?

A. Yes, sir.

Q. Who arrested him?

A. Ike Muckle.

Q. After Ike arrested Henry, did you remain in his or Henry's company until the train came?

A. Yes, sir.

Q. Did Henry have any conversation with Ike concerning the commission of this offense by him?

A. No, sir.

Q. Did Muckle tell you, or make any statement to you, at Shaw's with regard to his purpose in this arrest?

A. Ike Muckle asked Henry did he do it, and Henry told him no, and he said, "Well, you had just as well say you did, because I am going down and say that you told me you did it, because I have got to have my money."

Q. Where was he at the time he made this statement?

A. He was in the depot.

Q. At Shaw's station?

A. Yes, sir; and I was sitting side of him.

Cross-examination:

Q. What kin are you to this man?

A. I ain't anything at all.

Q. He was at your house when they got him?

A. At my father's.

Q. Is that where you live?

A. Yes, sir.

Q. You were not harboring him?

A. No, sir.

UGH POOR COPY

Q. You were not trying to keep the officer from catching him?
A. No, sir.
Q. What was Henry doing up in the second story—was that his apartment?
42 A. I don't know, sir.
Q. Did you know these folks were after Henry for killing this woman?
A. After Henry?
Q. Yes, sir.
A. I do not know, sir.
Q. You never had heard anything about that, then?
A. No, sir.
Q. As soon as Henry saw someone inquiring for him he got up in the loft and got up on the plank?
A. I reckon he did; it was not in that room.
Q. You came over to the door and let Muckle in?
A. Ike asked me was he in there, and I told him to come in and see.
Q. First said you did not know; first said he was not?
A. I told him to come in and see; I did not tell him he was not in there or was, but to come in and see.
Q. You knew that he was up in the loft?
A. No, sir; I was in the other room.
Q. But you all were not trying to shield or harbor Henry from the officers of the law?
A. No, sir.

LOUIS WALKER, witness for the defendant, being sworn, testified as follows (colored):

Q. Do you remember the night Henry Williams was brought down from Shaw's station under arrest by Ike Muckle at Leland?
A. I do not remember the night, I remember the evening.
Q. You remember the occurrence?
A. Yes, sir.
Q. Did you see Ike Muckle at Leland that evening, when he got off the train?
A. I never saw him get off the train; I saw him about an hour after the train left.
Q. What part of town did you see him in?
A. He was sitting there at the Leland Mercantile Co.'s store.
Q. Did you hear him, or at least did you have any conversation with anybody concerning the confession of Henry Williams, made to him that day at Shaw's station and what he said?
43 A. He was sitting there with another fellow; him and another fellow was sitting there on a bench and I was sitting on the sidewalk fixing my shoe. I was not there when they first started to talk.
Q. Who was the other fellow?
A. I do not know; I suppose he must have been a constable because he said he was looking for him.
Q. State to the jury what Muckle said to the party.
A. Muckle said that he was going to say Henry told him that he did this to get his money, because if he did not convict him he would not get it.

BLEED THRO

Cross-examination:

Q. Where do you live?
A. Leland.
Q. Where do you live now?
A. Johnson's farm.
Q. What are you doing out there?
A. Putting up time.
Q. What are you putting up time for?
A. For assault and battery.
Q. As a matter of fact ain't you out there for petit larceny?
A. One charge.
Q. Sent out there for larceny?
A. No, sir.
Q. That is what petit larceny means; one charge is petit larceny and that you were sent out there for?
A. The second charge is.
Q. The first one was for assault and battery and the second for stealing, and you are on the farm for that sentence, ain't you?
A. Yes, sir.
JONES. You have not been convicted of perjury, have you?
COURT. That ain't competent.
HUMPHRIES. He has not been convicted of it; no.

HENRY WILLIAMS, sworn and testified in his own behalf as follows (colored):

Q. You are charged with having murdered one Eliza Brown; state to the if you had any conversation with Ike Muckle at Shaw station concerning this case.
A. I never had no conversation with Ike Muckle at all only what he told me; he tried to fix me and make me say I killed this woman
44 and I would not tell him anything about it, and he tried to make me drunk whilst they had me under arrest, and after he could not get me drunk he said you might as well tell me that you killed this woman because I am going in court and testify that you did tell me so.
Q. Who was present at the time that he made that statement?
A. At the time he told me that there was Lou Gay Coleman sitting in the depot.
Q. You and Lou Gay Coleman were present at the time?
A. Yes, sir; and Lou Gay Coleman heard the conversation.
Q. When you got to Leland did you have any conversation then?
A. He had me in the lockup then.
Q. You heard the testimony of Gus Miles, that you made a threat against the life of this woman on the Thursday following Christmas; did you have such conversation with Gus Miles?
A. No, sir.
Q. Did you have any conversation touching this woman at all with Gus Miles?
A. No, sir; I did not.

Cross-examination:

Q. Did you kill this woman?

GH POOR COPY

A. I did not say I killed her at all; I do not know whether I killed her or not; I tried to do it.

Q. But you do not know whether you killed her or not?

A. No, sir; they say so, but I don't know anything about it.

Q. Did you choke her that day?

A. No, sir.

Q. When was the last time you saw her?

A. I seen her Thursday morning.

Q. Were you with her at Brown's house?

A. Yes, sir; we goes there, me and her; we did not go there together; she went ahead of me, and another fellow named Henry Moerlin and me went there; when I got there she was there; they sent for us to come there.

Q. Did you leave there with her?

A. All three of us left the house together.

Q. Where did you go?

A. I went towards the depot and stopped.

45 Q. Did you go on to her house that day?

A. I went that evening because I had to go away.

Q. Was she there then?

A. Her and some one else; I do not know who it was.

Q. Some stranger?

A. Yes, sir.

Q. Was he a bad-looking fellow?

A. I do not know whether he was bad looking or not; I did not see his face because he was running when I seen him.

Q. You went there and saw a man who was running?

A. I saw a man running out the back door.

Q. You never told Ike Muckle that, did you?

A. No, sir.

Q. But as a matter of fact you did go there and when you got there there was a man running out of the back door?

A. Yes, sir.

Q. What did you do then?

A. I goes in; the front door was locked. When I got there I said open the door, and she never opened the door at all, and I heard somebody going out of the back door, and I goes on around the house and aimed to go in the house, and I got around to the back door and this fellow run out of the gate. I turned around and looked and said to myself, I wonder who is that; I walks on and seen him with his hat in his hand going up the lane.

Q. What sort of fellow was he?

A. A dark-skinned fellow. I went in the house and spoke to this woman. I said: "Eliza, what is the matter, what is this fuss about?" and she did not say anything to me at all no more, that ran back and grabbed a pistol and said: "You God dam' son of a bitch, I told you days and days before I was going to kill you." I said: "What for?" I had not been payin' no attention to her. She says: "I have told you if ever you run on me with a man I am going to kill you, and to-day you run on me." She says: "Prepare yourself to die, because when I go to kill you I *I* am going to kill myself, so that the law won't have no hold

on me," and she made at me with a pistol, and I struck her with my hand on the side of the neck.

46 Q. And she walked on towards you with the pistol in her hand?

A. And I backed back and she kept coming and she was close to me, and when she kept coming to me I did not think she was going to shoot and I was not going to give her no chance; I did not think she was going to shoot, and so she kept the pistol on me, and I seen her aim and commence to move the trigger, and I grabbed the pistol and struck her again and knocked her down and snatched the pistol out of her hand and struck her side of the neck.

Q. Which side of the neck did you hit her on?

A. I do not know which side—left or right.

Q. Did she fall then?

A. Yes, sir.

Q. What did you do then?

A. I did not do nothing; throwed the pistol on the bed and walked out of the house.

Q. Did you leave her on the floor?

A. Yes, sir.

Q. Did you cover her up?

A. No, sir.

Q. Did you tell anybody anything about it?

A. No, sir.

Q. What did you do; go away?

A. I got on the train and went to Greenwood, where I was aiming to go.

Q. How long did you stay in Greenwood?

A. I stayed there that night I got there and came on back next morning, and came back to Leland, and left Leland and went to Shaws.

Q. When Ike Muckle came up for you, did you expect he was coming for you for killing this woman?

A. No, sir; I did not suspect anything about it at all.

Q. You did not know you had killed her?

A. No, sir.

Q. You had no idea when you left her she was dead?

A. No, sir; I was after saving myself, because I seen by her looks and seen the hammer move looked like she was going to shoot anyhow; she was holding it trembling and kept coming on me, and I seen the hammer move, and I grabbed the pistol and struck her.

Q. But you did not think you had killed her?

A. No, sir.

47 Q. When this man came for you up there at Shaws, you did not think he was coming after you for killing this woman?

A. I did not know what he was coming after me for. I did not think he was coming after me at all.

Q. What did you get on the planks for?

A. I was not up there.

Q. You were not up there on the plank?

A. I was not up on the plank.

Q. What were you on?

A. When he came in the house, I was on the board.

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Q. What made you go up on the board if you did not think he was after you?

A. Because I was up there eating pecans. One of the girls had some pecans hid up there and I went there to get them.

Q. When this man went and asked for Henry Williams, knocked at the door, and when Lou Gay Coleman was there, they first told him you were not there, didn't they?

A. I do not know.

Q. Didn't you hear that?

A. No, sir.

Q. Well, when Muckle went in there, you still laid up on the boards eating pecans? You stayed up there eating pecans until he climbed up on the wall and hollered at you to get down?

A. He did not holler at me; he said, "Henry, come down; I want you." I said "What?" He says, "Come on down; I want you."

Q. But you never did tell Muckle that when you went to your house the man run out behind and away from you?

A. I never told Ike Muckles anything at all. He said to me, "I will make up some kind of a tale on you," and I said, "Well, I can't help it."

Q. You did not tell him that you went there and this woman pulled a pistol out and swore she was going to kill you?

A. I did not tell him anything, I tell you.

Q. And when the woman came on you with the pistol that you knocked her down?

A. I never told him anything.

Q. And that you got on her and choked the stuffing out of her?

A. I did not tell him anything at all.

Q. As a matter of fact, when you knocked the woman down,
48 didn't you get on her and choke her?

A. No, sir; I throwed the pistol down on the bed.

Q. Did you take your pants off?

A. No, sir; I took the pants off I had on—this pair here; these are the pants I taken off; the same pants I had on.

Q. Did you take them off and put on another pair?

A. Pulled off my pants and put on another pair; no, sir.

Q. Didn't you have on a dark pair of pants and take them off and put on another pair and then leave?

A. No, sir.

Q. You left the pistol lying on the floor?

A. On the bed.

Q. What room did you have this difficulty in?

A. In the same where we were at.

Q. What room was that?

A. Back room.

Q. Shed room?

A. It is the back room; it is not a shed room.

Q. How many rooms to the house?

A. I do not know; I suppose it was three.

Q. You stayed there pretty well all the time?

A. Yes, sir.

Q. Was this little room the room you had the difficulty in?

A. In 'his roo*n* here.

BLEED THROUG

Q. But when you left her you left her lying on the floor?
A. Yes, sir.
Q. In this back room?
A. Yes, sir.
Q. You did not take her in the next room and cover her up with anything?
A. I never put my hands on her after I knocked her down.
Q. Did you take the pistol away from her?
A. After I struck her she turned the pistol aloose and I took the pistol and struck her again with the pistol and took it and throwed it down on the bed.
Q. You hit her in the neck every time you hit her?
A. Yes, sir.
Q. With your fist you hit her in the neck and with that pistol you hit her in the neck?
A. Yes, sir.
49 Q. Do you know whether you cut her in the neck?
A. I never paid any attention to it at all.

This is all the evidence in the case.

I, W. J. Buck, official stenographer of the fourth circuit court, dist. of Miss., hereby certify the foregoing pages to contain a true copy of the evidence taken on the trial of the case of State of Miss. vs. Henry Williams, No. , charged with murder, and tried at the June, 1896, term of the circuit court of Washington County.

W. J. BUCK.

Signed July 3rd, 1896.

In the testimony of State witness, Addie Brown, the defendant objected to her statement as to what was said about a pistol. The court excluded all the conversation about the pistol, but allowed the statement that witness saw defendant have pistol to go to the jury, and the defendant excepted, after all the evidence was in, the State having rested.

The district attorney argued to the jury the fact that the defendant showed State witness Addie Brown a pistol and put it back in his pocket, as objected to by defendant, and the fact that the deceased in all probability carried her money usually in her stocking leg, and that the defendant murdered her and stripped the stocking down over the foot to get the money she had. The argument about the pistol having been ruled out in the evidence after it had gone to the jury, the defendant asked that the district attorney's argument in that respect be ordered to the jury by the court, not to be considered in determining their verdict. The court declined to instruct the jury, and the defendant then and there excepted.

Asked the court to instruct the jury not to consider the argument of the district attorney that the defendant knew the deceased had money in her stocking, and that he killed her and stripped her stocking down over the foot of the deceased, as testified by State witness, Tom. Jones. The court denied the motion to exclude, and the defendant then and there excepted.

50 The court gave the following instructions for the State, to which the defendant excepted: "The court instructs the jury, that if they believe from the evidence beyond a reasonable doubt that the defendant

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deliberately killed the deceased, when he was in no danger, real or apparent, of receiving at the hands of deceased some great bodily harm, they must find him guilty as charged."

2nd instructions: The court instructs the jury that if they find the defendant guilty as charged the court will sentence him to be hanged; but if they believe from the evidence beyond a reasonable doubt that defendant is guilty as charged they may find him guilty as charged and fix his punishment at imprisonment in the penitentiary for life. But the court further instructs the jury that if they believe from the evidence beyond a reasonable doubt that the defendant is guilty as charged, but disagree as to the punishment, then they must return a verdict of guilty as charged.

Given June 16th, 1896.

W. K. GILDART, *Clerk.*

The court was asked the following instructions for the defendant: The court instructs the jury that if they believe from the evidence that the deceased was at the time of the difficulty making an overt demonstration toward the accused with a deadly weapon, and that had reason to apprehend the commission of some bodily harm from the hands of the deceased, and that he acted in the light of such fear and struck the deceased and killed her, you are not warranted in finding him guilty of murder, but must acquit. The court modified this instruction by striking out the word "apprehend" and inserted the words "Believe from the acts of deceased," and the court struck out the words "in the light of such fear," as last written in said instruction, and inserted the following: "On such belief," to which action of the court the defendant then and there excepted.

1st instruction for defendant: The court instructs the jury
51 that if you believe from the evidence that defendant killed deceased in heat of passion in a sudden encounter and not of malice aforethought, you will find guilty of manslaughter.

Given June 16th, 1896.

W. K. GILDART, *Clerk.*

On the 19th day of June, said term, the jury having found the defendant guilty as charged, whereupon following judgment was rendered by the court:

Judgment.

STATE OF MISSISSIPPI
vs. } No. 4481.
HENRY WILLIAMS.

This day came the district attorney who prosecutes on behalf of the State and the defendant, Henry Williams, in his own proper person, and it appearing to the court that the defendant, Henry Williams, had been solemnly arraigned and charged on the indictment herein of a charge of murder and plead not guilty on a former day of this term of this court, thereupon came a jury of good and lawful men, to wit: S. R. Guise and eleven others who, being duly empannelled and sworn to well and truly try the issue joined herein between the State of Mississippi and the said

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defendant Henry Williams of a charge of murder and a true verdict give according to the law and evidence, who, after hearing the evidence and receiving the instructions of the court, retired in charge of L. E. Clarke and Grafton Baker, bailiffs, specially sworn by the court to attend to them to consider of their verdict, and having considered of the same returned into open court in charge of their said bailiffs and in the presence of the defendant, Henry Williams, rendered the following verdict, to wit: We, the jury, find the defendant guilty as charged, and the said Henry Williams being brought to the bar of the court was asked if he had anything to say why the sentence of the law should not be passed upon him, answering said he had naught to say, whereupon the court ordered that the said Henry Williams be taken to the county jail and con-

52 fined therein and there safely kept by the sheriff of Washington County until Thursday, the 30th day of July, 1896, when the said sheriff of said county shall, between the hours of 9 a. m. and 5 p. m., hang the said Henry Williams by the neck until he is dead; said execution shall take place within the walls of said jail or within the inclosed yard of said jail, unless the board of supervisors of Washington County shall order that said execution shall be at some other place designated by them. It is further ordered that the clerk of this court furnish the said sheriff a certified copy of this order and that he also issue the proper writ of execution.

The accused moved for a new trial.

STATE)
vs. } 4481.
HENRY WILLIAMS.)

Now comes the defendant in this cause, and moves the court that the verdict of the jury in this cause be set aside and he be awarded a new trial,

(1) Because the verdict is contrary to the law and the evidence.

(2) Because under the law the question of overt demonstration by the deceased and apprehension of danger therefrom on the part of the accused was never disproven or put in issue by the State, and under the instruction from the court on that point the jury was not warranted in bringing the defendant in guilty as charged.

(3) The court erred in overruling the defendant's objection to the testimony of Addie Brown and permitting the district attorney to argue the fact concerning a pistol defendant showed her, and erred in refusing to instruct the jury not to consider such fact.

(4) The court erred in refusing to instruct the jury to not consider argument of district attorney that deceased carried her money in her stocking, and that the defendant killed her and stripped the stocking down over the deceased' foot and took the money therefrom, when there was no such evidence in the case.

53 (5) The court erred in refusing to instruct the jury to not consider the confession testified to by witness I. M. Muckle, because the State failed to show that the said confession by the accused was free and voluntari*l*y, and granting first instructions for the State.

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(6) The court erred in overruling the motion to quash the indictment, and also erred in denying the petition for removal of the trial into the United States circuit court.

C. J. JONES,
Attorney for Henry Williams, Defendant.

Filed June 19th, 1896.

W. K. GILDART, *Clerk.*

The court, after hearing the same, overruled said motion, and the defendant then and there excepted.

STATE OF MISSISSIPPI }
vs. } No. 4481.
HENRY WILLIAMS. }

This cause coming on to be heard, and the defendant being in open court on a motion for a new trial, and the court being sufficiently advised, it is ordered by the court that the same be, and is hereby, overruled, to which action of the court the defendant then and there excepted, and he be allowed sixty days to file his bill of exceptions; therefore defendant tenders this his bill of exceptions, and that the same be made a part of the record of said cause, and that the same be signed and sealed accordingly as the law directs, which is so ordered.

Signed this the 19th day of June, A. D. 1896.

R. W. WILLIAMSON,
Presiding Judge of the Fourth Judicial District of Mississippi.

Filed Sept. 8th, 1896.

W. K. GILDART, *Clerk.*

54 *To the circuit clerk of Washington County, Miss.*

Whereas, on the 16th day of June, 1896, Henry Williams was tried in the circuit court of said county for murder, and convicted, and sentenced to be hanged on July 30th, 1896, said Henry Williams feels aggrieved thereby, and prays an appeal to the supreme court of said State according to law.

HENRY WILLIAMS.
C. J. JONES, *Attorney.*

STATE OF MISSISSIPPI, *Washington County:*

I, Henry Williams, do this day solemnly swear, that I am a citizen of the State of Mississippi, and that by reason of my poverty I am not able to pay or secure the costs of the court, in consequence of the appeal which I am about to take, from the judgment of the circuit of said county rendered against me in case No. 4481, to the supreme court of the State of Miss., and I verily believe I have a just cause of action in taking said appeal.

HENRY x WILLIAMS.
mark.

Sworn to and subscribed before me the 19th day of June, 1896.

W. K. GILDART, *Clerk.*
By J. A. SHALL, *D. C.*

Filed June 19th, 1896.

W. K. GILDART, *Clerk.*
By J. A. SHALL, *D. C.*

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STATE OF MISSISSIPPI, *Washington County:*

I, Wm. K. Gildart, clerk of the circuit court of Washington County, State of Mississippi, do hereby certify that the foregoing 51 pages contain a true and perfect copy of the record and proceedings had at the January term, 1896, in the case of State of Mississippi vs. Henry Williams, as the same appears of record in my office.

Given under my hand and official seal this the 30th day of Sept., 1896.

[SEAL.] WM. K. GILDART, *Circuit Clerk.*

55 The foregoing transcript endorsed, "Filed October 8th, 1896. E. W. Brown, clerk, by C. C. Campbell, D. C."

Proceedings in Supreme Court.

And on the 26th day of October, 1896, the following order was made, to wit:

HENRY WILLIAMS)
v.) 8506.
STATE OF MISSISSIPPI.)

Submitted on brief by Mr. C. J. Jones for the appellant, with leave to the attorney-general to file brief during the week.

And on the 9th day of November, 1896, the following opinions were filed, to wit:

56 8504. John Henry Dixon v. State of Mississippi.

Cooper, C. J., delivered the opinion of the court.

The appellant has been indicted, convicted, and sentenced to imprisonment for life for murder of one Nancy Minor. In the court below the defendant made a motion to quash the indictment, and when the motion was overruled he moved for a transfer of the cause from the State to the Federal court. This motion was also denied. The action of the court in refusing to quash the indictment and in denying the petition for a transfer of the cause constitute the principal errors assigned. The motion and the petition set out, in effect, the same fact; and affidavits of several presons were filed that the matters therein stated were, as affiants believed, true. The purpose of the motion seems to have been primarily to assail the validity of all the laws passed since the adoption of our recent constitution, and of that constitution itself, on the groung that said constitution and laws are obnoxious to the fourteenth amendment to the Constitution of the United States. The motion is too long to be inserted in this opinion. It states some facts, many inferences and deductions, and an argument to show that the conditions resulting from the adoption of the constitution are incompatible with the rights guarantied to the colored race by the fourteenth amendment. Compressed with reasonable limits, the substance of the motion is that the constitutional convention was composed of 134 members, of which 133 where whites and one only a negro; that the purpose and object of said constitution was to disqualify, by reason

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of their color, race, and prev us condition of servitude 190,000 negro voters; that the constitution was not submitted to the vote of the people, and that the representation of the State in Congress has not been reduced, as it should have been upon the disqualification of so great a number of voters; that sections 241, 242, and 244 of the constitution of this State are in conflict with the fourteenth amend-
57 ment of the Constitution of the United States, because they vest in administrative officers the power to discriminate against citizens by reason of their color; and that the purpose of so investing such officers with such power was intended by the framers of the State constitution to the end that it should be used to discriminate against the negroes of the State. We will recur to the contents of the motion hereafter, for the purpose of considering such averments as seem more nearly related to the subject under investigation, viz, the competency and legality of the grand jury by which the indictment against appellant was returned. At this point in the investigation it is sufficient to say that we have no power to investigate or decide upon the private, individual purposes of those who framed the constitution, the political or social complexion of the body of the convention, and have no concern with the representation of the State in Congress. We can deal only with the perfected work—the written constitution adopted and put in operation by the convention. We have heretofore decided that it was competent for the convention to put the constitution in operation without submitting for ratification by the vote of the people. Sproule v. Fredricks, 69 Miss., 898.

We find nothing in the constitutional provisions challenged by the appellant which discriminate against any citizen by reason of his race, color, or previous condition of servitude. Section 241 declares who are qualified electors, section 242 makes it the duty of the legislature to provide for the registration of persons entitled to vote, and section 244 declares that "on and after the first day of January, A. D. 1892, every elector shall, in addition to the foregoing qualification, be able to read any section of the constitution of this State, or he shall be able to understand the same when read to him or give a reasonable interpretation thereof. A new registration shall be made before the next ensuing election after January the first, A. D. 1892." All these provisions, if fairly and impartially administered, apply with equal force to the individual white and negro citizen. It may be, and unquestionably is, true
58 that, so administered, their operation will be to exclude from the exercise of the elective franchise a greater proportionate number of colored than of white persons. But this is not because one is white and the other is colored, but, because of superior advantages and circumstances possessed by the one race over the other, a greater number of the more fortunate race is found to possess the qualifications which the framers of the constitution deemed essential for the exercise of elective franchise.

We have searched the record in vain to discover any averment that the officers of the State charged with the duty of selecting jurors in any manner exercised the power devolved upon them to the prejudice of the appellant by excluding from the jury list members of the race to which he belongs. The motion contains much irrelevant matter, set up with great prolixity, and in involved and obscure language. But repeated and

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careful examination conducts us to the conclusion that much of its seeming obscurity vanishes when we read the motion in the light of the opinion entertained by counsel as to how the supposed discrimination has been made. He did not intend to charge by the motion that the officers by whom the grand jury was selected violated the law, but that they were, by the law under which they acted, required to select jurors from certain lists furnished to them by the officers charged with the duty of holding elections in the State, and that these election officers in making such lists discriminated against the race of appellant. In this view the motion was properly denied for the reason that jurors are not selected from or with reference to, any lists furnished by such election officers. No such list is required to be made for use in selecting jurors, nor does the motion distinctly charge that any such was returned to the officers charged with the duty of selecting jurors, and by them used. The motion is based on the assumption that such list was essential to the selection of the grand jury and without it no jury could be drawn, and that the list was made by discriminating against the negro race.

59 Our laws in reference to elections and in reference to the selection of grand and petit juries are totally distinct. To be an elector, or to serve upon a jury, one must be registered as a voter. But the acts and doings of those charged with holding elections can exercise no influence upon those by whom the juries are selected. One may be denied the right to vote by the election officers, and yet be permitted to sit upon juries, grand or petit; one may be ineligible to sit upon a jury, and yet qualified and permitted to vote. By section 241 of the constitution it is provided that "every male inhabitant of this State, except idiots, insane persons, and Indians not taxed, who is a citizen of the United States, twenty-one years old and upwards, who has resided in this State two years and one year in the election district, or in the incorporated city or town in which he offers to vote, and who is duly registered as provided in this article, and who has never been convicted of bribery, burglary, theft, arson, obtaining money or goods under false pretenses, perjury, embezzlement, or bigamy, and who has paid on or before the first day of February of the year in which he shall offer to vote all taxes which may have been legally demanded of him, and which he has had an opportunity of paying according to law, for two preceding years, and who shall produce to the officer holding the election satisfactory evidence that he has paid said taxes, is declared to be a qualified elector; but any minister of the gospel, in charge of an organized church, shall be entitled to vote after six months' residence in the election district, if otherwise qualified." Section 264 declares who shall be qualified as jurors. It is as follows: "No person shall be a grand or petit juror unless a qualified elector and able to read and write; but the want of any such qualification in any juror shall not vitiate any indictment or verdict. The legislature shall provide by law for procuring a list of persons so qualified, and the drawing therefrom of grand and petit jurors for each term of the circuit court." It is not necessary that one desiring to register shall have paid his taxes as prescribed by section 241.

60 That has to do with voting, and not registration. Bew v. State, 71 Miss., 1. One who has registered, and has in fact paid his taxes, although he has not offered to vote, and therefore has not produced to the

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officers holding an election satisfactory evidence of such payment, and who can read the constitution (Mabry v. State, 71 Miss., 716) and write, is qualified, under the constitution, to sit as a juror. It is true that section 241, in declaring who are electors, seemingly imposes, as an essential qualification, that the elector not only shall have paid his taxes, but also shall have produced satisfactory evidence thereof to the officers holding an election. But the section must have a reasonable and sensible construction. Registration and payment in fact of the taxes as prescribed are the substantial things required to qualify one as an elector. Proof of the fact that taxes have been paid, to the satisfaction of the election officers, is also required when the elector comes to vote; but when he is presented as a juror such payment is proved before the court, and not by the fact that he has been permitted to vote. If in truth he has paid his taxes, and possesses the other requisite qualification, the fact that he has never offered to vote, and therefore has never "produced to the officers holding an election satisfactory evidence that he has paid said taxes," or if, offering to vote, has failed to satisfy the officers that he has paid taxes, does not render him ineligible as a juror.

Section 2358 of the code prescribes how the jury lists shall be made. It provides that "the board of supervisors at the first meeting in each year, or at a subsequent meeting if not done at the first, shall select and make a list of persons to serve as jurors in the circuit court for the next two terms to be held more than thirty days afterwards, and as a guide in making the list they shall use the registration books of voters, and it shall select *and* list of names of qualified persons of good intelligence, sound judgment, and fair character, and shall take them, as nearly as it conveniently can, from the several election districts, in proportion to the number of qualified persons
61 in each, excluding all who have served on the regular panel within two years, if there be not a deficiency of jurors." It is from the list thus made that grand and petit juries are drawn. The sections of the code under which appellant claims that he was discriminated against have relation, not to the selection of juries, but to the subject of registration and voting, and his contention is not that persons entitled to register were denied registration by the registrar, but that the managers of the elections are by law made judges of the qualifications of the electors offering to vote, and have denied to persons qualified to vote the right so to do. Conceding this to be true, we fail to perceive in what manner the appellant has been injured. The managers are required to supervise the election, and are authorised to examine on oath any person duly registered and offering to vote touching this qualification as an elector. They are judges of the qualifications of such persons, and may deny the right to vote to one not entitled, though he be registered; but they have no power to strike the name of such persons from the books nor to put any additional names thereon. The registration book of the county does not go into the possession of the managers of the election, but are furnished with poll books, which contain the names of the registered voters in the district, copied from, or made contemporaneously with, the registration book. As votes are cast, one of the clerks of the election takes down on a list the names of the voters, while the other enters a check upon the poll book opposite the name of such per-

son, and at the close of the election the votes are counted and result declared. And the statute provides that "the statement of the result of the election district shall be certified and signed by the managers and clerks, and the poll books, tally lists, list of voters, ballot boxes and ballots shall be delivered as required to the commissioners of the election." Code §3670. This is the only list known to us that the law requires to be made by the officers. It does not show, or purport to show, who are qualified electors, but only who have voted; and it has no relation except to matters connected with the election, and performs no function in ref-
62 erence to the selection of jurors. The boards of supervisors, by which bodies jury lists are made, never see these lists. They are returned and dealt with by the election commissioners—a wholly different body. And so, if it be true that the managers of the elections have discriminated against colored voters and unlawfully denied them the right to vote, it does not appear how the appellant has been deprived of any advantage or protection afforded to him either by the constitution or laws of this State or by the Constitution of the United States.

There is no suggestion in the motion that the jury commissioners were guilty of any fraud or discrimination in selecting the jurors. If in truth there was no registration book in the county to guide them in their selection of the jurors their action in making the jury list was irregular, and, upon objection made before the grand jury was impaneled, the panel would have been quashed. Purvis v. State (Miss.), 14 South., 268. But our statute provides that "before swearing any grand juror as such he shall be examined by the court, on oath, touching his qualification, and after the grand jurors shall have been sworn and impaneled no objection shall be raised, by plea or otherwise, to the grand jury, but the impaneling of the grand jury shall be conclusive evidence of its competency and qualification, but any party interested may challenge or except to the array for fraud." Head v. State, 44 Miss., 731; Durrah v. State, 44 Miss., 789. In Neal v. Delaware, 103 U. S., 370, Gibson v. State, 162 U. S., 565, the Supreme Court of the United States has thoroughly discussed the subject of the right of a negro to the impartial protection of the law, and has clearly expressed the circumstances under which, and the means by which, that right is to be vindicated. If, by the constitution and laws of the State, negroes are, by reason of their race, color, or previous condition of servitude, excluded from juries, or in such other manner discriminated against as that fair and impartial trial can not be had in the State courts, then a negro proceeded against in the
63 courts of the State may have his cause removed to the courts of the United States for trial. If there is no discrimination by the law, but the complaint is that by the act of the officers of the State, charged with the administration of fair and impartial laws, discrimination has been made against the race, the defendant may not have a removal of his cause, but must make his defense in the State courts and appeal from the final judgment of the supreme court of the State to the Supreme Court of the United States. In Gibson v. State of Mississippi, supra, the Supreme Court of the United States declared that neither the constitution nor laws of this State prescribed any rule for, or mode of, procedure in the trial of criminal cases which is not equally applicable to

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all citizens of the United States and to all persons within the jurisdiction of the State, without regard to race, color, or previous conditions of servitude. We can discover nothing in the record which shows that the appellant, either by the laws of this State or by their administration, has been denied the right of a fair and impartial trial. The motion to quash the indictment and for removal of the case were properly overruled. We have dealt with the case upon the assumption that the facts set out in the motion are true. No objection was made in the court below because the proof was made by affidavits instead of by witnesses, and it is common practice in our courts, in the absence of objection, to hear affidavits on motions.

The error assigned touching the action of the court in admitting evidence of the state of feeling of the appellant towards the woman Lavinia, at whom the shot was fired that killed Nancy Minor, is not maintainable. The defendant himself, on cross-examination of the witness Eliza Minor, drew out this evidence. But aside from this, the evidence was entirely competent as tending to show quo animo the fatal shot was fired. The judgment is affirmed.

64 *Opinion.*

HENRY WILLIAMS)
v.
THE STATE OF MISS.)

Whitfield, J.

This cause is construed by the opinion this day delivered by Chief Justice Cooper of John Dixon v. State.

We find no error, and the judgment is affirmed.

And on Monday, the 9th day of November, 1896, the following final judgment was rendered, to wit:

HENRY WILLIAMS)
v.) 8506.
STATE OF MISSISSIPPI.)

This cause having been submitted on a former day of this term on the record herein from the circuit of Washington County, and this court having sufficiently examined and considered the same, and being of opinion that there is no error therein, doth order and adjudge that the judgment of said circuit court rendered in this cause at the June term thereof, A. D. 1896, be, and the same is, hereby affirmed. It is further considered, and so ordered and adjudged by this court, that the appellant, the said Henry Williams, for such his crime of murder, be kept in close confinement in the jail of said county until Thursday, the 10th day of December, 1896, on which day, between the hours of 11 o'clock a. m. and 4 o'clock p. m., he, the said Henry Williams, shall be, by the sheriff of said county, within the inclosure of said jail or at such other place of execution as the board of supervisors may designate according to law, hanged by the neck until he be dead.

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65 In the supreme court of Mississippi.—Application for a writ of error.

To the Honorable Thomas H. Woods, Chief Justice of the Supreme Court:

This petition respectfully shows unto this honorable court that at the June term, 1896, of the criminal court of the county of Washington, State of Mississippi, relator Henry Williams was in open court arraigned upon a charge of murder, and that said accused then and there filed and tendered a motion to quash the said indictment. The accused alleged as grounds therefor that the bill of indictment was not returned by a regular grand jury, according to the law, because said grand jury was not lawfully selected, summoned, sworn, and charged according to the law. Relator charged that the said jury was selected by and under the enforcement of the present constitution of the State and the operation of the several sections of the present statute of the State regulating the registration and qualifications of electors, to wit, sec. 241, 242, 244 of the constitution of said State and sections 3643, 3644 of the statutes, and which several sections of the respective laws were enacted for the express purpose of effecting a denial to the negroes of the State the right of elective franchise because of their race, color, and previous conditions of servitude, and that the condition of the previous servitude is that of slavery formerly existing this State, to which the accused and members of his race were formerly subjected; both as such ex-slaves and to *the* effect the desired end, the framers of the present constitution provided in § 242 of that instrument that the register of the several counties of the State should be vested with certain discretionary power as to the qualification of persons applying for the registration, which registration is essential to the one right to vote or serve on jury. That convention which enacted the constitution then and there at said session delegated certain power to the legislature of the State in further regulation of the subject of registration;

66 but in order to make certain its intent aforesaid provided that the election for members of the legislature next after the enactment of said constitution should be by an ordinance of that body, and said convention knowing its members did, that the discretion left to the certain officers mentioned therein was for the purpose of effecting the disfranchisement of a majority of the male negro citizenship of the State, the said convention refused to submit that *the* instrument to the popular vote of the State, knowing as a fact that the calling said convention was not submitted to the popular vote of the State; but said convention arbitrarily declared the said constitution adopted and ordered an election for members of the legislature to perfect the plan. Thus the election held in Nov., 1891, at which 190,000 negro citizens of the State and of the United States fully qualified to have voted at such election, other than the arbitrary exercise of the discretionary power intentionally provided as aforesaid, were denied the right to register prior to the election or vote at said election, yet the legislature of 1892, which enacted the several code sections referred to herein, were by that constitutional provision elected. The accused further stated in his said motion that by virtue of the exercise of the discretion so provided as aforesaid by the register of Washington County the negro race in said county is totally excluded from

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jury service, and that the jury which returned the indic'ment was composed entirely of white men, to the entire exclu/ion of members of relator's race, on account of their color, race, and previous condition of servitude as aforesaid, and the purposes otherwise named. The accused further stated that by virtue of the enforcement of the present laws of said State at the election for members of the legislature in 1891 aforesaid 190,000 negroes were denied the right of elective franchise who had hitherto enjoyed such privil/ges in said State under the provisions of the constitution of 1869 and code of 1880, and that this denial was the
67 result of the conduct of the administrative officers of the State by virtue of the power given said officers under the organic and statute laws of the State, which power was purposely provided in said laws for the disfranchisement of the negro voters of the State who were otherwise qualified, and that the laws aforesaid and enforcement aforesaid are all on account aforesaid and purpose aforesaid. Relator stated that the representation of Mississippi in Congress before the adoption of said laws was seven Representatives and two Senators, and though the present laws, at the time of this presentment of the indictment, were made and enforced at the election aforesaid, which resulted as aforesaid, the represent/ation of said State in Congress has not been reduced according to the terms of the Federal Constitution, and therefore were not enforceable at the time of said indictment was returned or the time of which the grand jury was selected and organized.

This motion was sworn to and supported by separate affidavits upon the /eknowl/'ge and belief of the affiants.

The court then and there overruled the motion, and relator excepted at the time. After the arraignment the accused fil/ed and tendered to the consideration of the court of the United States; the accused alleged substantially the same grounds therefor as he alleged in the motion to quash the indictment, which are herein averred; and the accused fu'ther alleged in the petition for removal that, by virtue of the enforcement of the present constitution and statute of the State, he was denied the right of a fair and impartial trial, and that he could not secure such trial in said State court.

The court denied this petition, and the defendant then and there excepted. After the trial and conviction, the accused made a motion for a new trial, and brought the notice of the trial court the error in denying the motion to quash the indictment and the denial of the pet/ition for removal. The court overruled the application, and the accused then and there excepted. In due course of time the case was regu-
68 larly certified to the supreme court of Mississippi, being the highest court of appeals in said State, and the error in the ruling of the trial court in denying the motion to quash the indictment and the denial of the pet/ition for the removal of the cause were assigned as er'or to said supreme court. Relator states that the case has been by the supreme court adjudged upon its m/rits, and the final ju'gment by the court was rendered affirming the judgment of the trial court, on the 9th day of Nov., 1896, and the 10th day of Dec., 1896, the governor of said State respited the accused for a number of days; now the accused feels aggrieved by the judgment of the supreme court affirming the judgment of the trial court, and doth therefore pray that he be granted the writ

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of er'or in this cause to the Supreme Court of the United States to operate as supersed'as, and in dutybound doth ever pray.

HENRY WILLIAMS,
Relator.

CONELIOUS J. JONES,
Attorney for Relator.

THE STATE OF MISSISSIPPI, *Washington County:*

This day personally appeared before me the undersigned acknowledging officer in and for said county, C. J. Jones, who, being duly sworn, deposes and says, that the facts set out in the foregoing pet ition are true and correct as stated:

C. J. JONES.

Sworn to and subscribed this the 12 day of Dec., 1896.

[SEAL.]

HARRY SMITH,
J. P. and ex off. Not. Public.

69 Supreme court consultation room, State of Mississippi.

It is ordered that a writ of error in the within-named case be allowed from the judgement of the supreme court of Mississippi to the Supreme Court of the United States, and that the same operate as a *supersidios*, but without bail.

In witness whereof, hereto affix my signature this December 13, 1896.

THOMAS H. WOODS,
Chief Justice of Mississippi.

Filed Dec. 13, 1896.

E. W. BROWN, *Clerk.*
By C. C. CAMPBELL, *D. C.*

70 Know all men by these presents, that we, Henry Williams, principal, and C. J. Jones and H. E. Jones, sureties, are held and firmly bound unto the State of Mississippi in the penal sum of one hundred dollars, well and truly to be paid upon the following conditions: Whereas said Henry Williams has prayed an appeal by writ of error to the Supreme Court of the United States from a judgment and sentence rendered by the supreme court of Mississippi on the 9 day of Nov., 1896, and said appeal has been regularly allowed by the said State court. Now, then, this obligation is such, that should said Henry Williams prosecute his said writ of error with success before the said United States Supreme Court, this bond is void and for nothing held, but should said Henry Williams fail to prosecute said writ with successful effect, then this obligation is of full force and virtue for all cost awarded the State of Mississippi by the Supreme Court of the United States.

Witness our signatures this the 18 day of Dec., 1896.

HENRY WILLIAMS.
his
H. E. x JONES.
mark.
C. J. JONES.

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STATE OF MISSISSIPPI, *Washington County:*

This day personally appeared before the undersigned, an acknowledging officer for said county, H. E. Jones and C. J. Jones, who, being first duly sworn, deposes and say that H. E. Jones is worth the penalty of the foregoing bond, in visible realty, subject to execution.

C. J. JONES.

Sworn to and subscribed this the 18 day Dec., 1896.

HARRY SMITH, *J. P.*

Approved:

Chief Justice.

Filed Dec. 13, 1896.

E. W. BROWN, *Clerk.*
By C. C. CAMPBELL, *D. C.*

71 United States of America.

The President of the United States to the honorable the judges of the supreme court of the State of Mississippi, greeting:

Because in the record process and proceedings had and final judgment and sentence rendered by you in your said court, on the 9th day of November, 1896, in a cause lately pending therein (being the highest court of law in said State in which a decision could be had in said suit), wherein Henry Williams was appellant on appeal from the judgment and sentence of the circuit court of Washington County in said State, in said suit, in which said suit is involved a construction of the Constitution and the laws of the United States, and wherein by the said judgment and sentence of said circuit court of Washington County, as well as the judgment and sentence of your said supreme court, the rights of said Henry Williams, as a citizen of the United States, as guaranteed by the Federal Constitution, have been abridged and denied, as is alleged in the application of said Henry Williams, whereby manifest error hath happened to the great damage of said Henry Williams.

And the said Henry Williams having prayed for and obtained a writ of error from said judgment and sentence of said supreme court of Mississippi in said cause—which was granted by Hon. Thomas J. Woods, chief justice of said court, to operate as supersedeas without bail—and said Henry Williams having given bond for costs, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if the judgment and sentence therein hath been rendered, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further
72 to be done therein to correct that error what of right and according to laws and custom of the United States

BLEED THROUGH

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 16th day of January, in the year of our Lord 1897.

[SEAL.]

L. B. MOSELEY,
Clerk of the Circuit Court United States for the Southern District of Mississippi.

Filed Jan'y 18, 1897.

E. W. BROWN, *Clerk.*
By C. C. CAMPBELL, *D. C.*

73 *The President of the United States to the State of Mississippi and to Hon. W. N. Nash, the Attorney-General of the State of Mississippi:*

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed and lodged in the office of the clerk of the supreme court of Mississippi, wherein Henry Williams is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment and sentence rendered against the plaintiff in error, in said writ of error mentioned, should not be corrected and speedy justice be done to the party in that behalf.

Witness the Honorable Thomas H. Wood, chief justice of the State of Mississippi, January 18th, A. D. 1897.

THOMAS H. WOODS,
Chief Justice of the Sup. Ct. of Miss.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this January 18th, 1897.

[SEAL.]

L. B. MOSELEY,
Clerk U. S. Circuit Court, So. Dist., Miss.

Filed this January 18th, 1897.

[SEAL.]

E. W. BROWN,
Clerk.
By C. C. CAMPBELL,
Deputy Clerk.

I hereby acknowledge service of this writ and waive further execution this January 18, 1897.

WILEY N. NASH,
Attorney-General for Mississipi.

Filed Jan'y 18, 1897.

E. W. BROWN, *Clerk.*

74 State of Mississippi, supreme court.

I, E. W. Brown, clerk of the supreme court of Mississippi, hereby certify that the above and foregoing is a true copy of the final record,

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being the proceedings and judgment in the case of No. 8506, Henry Williams v. State of Mississippi (including the opinion in the case of Dixon v. The State, to which opinion in said Williams case refers), and the proceedings for appeal to the Supreme Court of the United States, being copies of the application for writ of error and order granting same, the original writ of error, original bond, and original citation, as the same appear of record and on file in said office. Said case of Henry Williams v. State of Mississippi being lately determined by said supreme court on appeal from the circuit court of Washington County.

Witness my hand and seal of said supreme court at office at Jackson this 3rd day of September, 1897.

[SEAL.]

E. W. BROWN, *Clerk.*
By C. C. CAMPBELL, *D. C.*

Fees for above transcript, $39.50, which is still due and unpaid.

E. W. BROWN, *Clerk.*
By C. C. CAMPBELL, *D. C.*

(Indorsement on cover:) Case No. 16744. Mississippi supreme court. Term No., 531. Henry Williams, plaintiff in error, vs. The State of Mississippi. Filed December 10th, 1897. Office Supreme Court of U. S. Received Sept. 8, 1897.

Office Supreme Court U. S.
FILED,
MAR 7 1898
JAMES H. McKENNEY,
CLERK.

No. 531.

Brief of Jones for P. C.

531

Filed Mar. 7, 1898.

IN ERROR TO THE

Supreme Court of the United States

FROM THE

Supreme Court of Mississippi.

HENRY WILLIAMS

VS.

THE STATE OF MISSISSIPPI.

BRIEF OF PLAINTIFF IN ERROR.

CORNELIUS J. JONES,
Attorney for Plaintiff in Error.

HAYWORTH PUBLISHING HOUSE, 513 9TH ST. N. W. WASH. D. C.

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IN ERROR TO THE

Supreme Court of the United States

FROM THE

Supreme Court of Mississippi.

HENRY WILLIAMS

VS.

THE STATE OF MISSISSIPPI.

STATEMENT OF FACTS.

At June term 1896 of the Circuit Court of Washington County, Mississippi, the accused was indicted by a grand jury, composed entirely of white men, upon the charge of murder. He filed a motion to quash the indictment when arraigned for plea, (See Rec. p. 2.) This motion was overruled and exception reserved, (See Rec. p. 9). Whereupon accused filed his petition for removal of the trial to the Federal District Court (See Rec. p. 9); this petition being overruled exception was reserved; (See Rec. p. 14 and 15), also special bill of exceptions. The accused was tried under said indictment before a petit jury composed entirely of white men, and convicted, whereupon he moved for a new trial, (Rec. p. 37). This motion was denied and excepted to (See Rec. p. 38). The trial court then pronounced the death penalty, (Rec. p. 36 and 37). Due course of appeal to the State Supreme Court was taken, and all the exceptions reserved were assigned thereto as error. On the 26th day of October, 1896, the

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Supreme Court rendered a decision affirming the judgment, (p. 39 of Rec.) And thereupon pronounced judgment for execution, (p. 44 of Rec.) Whereupon accused prayed grant of the writ of error (See Rec. p. 45,) and hence the case is here for ultimate review.

ASSIGNMENTS OF ERROR.

1. The trial court erred in denying motion to quash the indictment, and petition for removal.

2. The trial court erred in denying motion for new trial, nd pronouncing death penalty under the verdict.

3. The Supreme Court erred in affirming the judgment of the trial court.

AUTHORITIES CITED.

White vs. Texas, 7 Wall.
16 Wall. 67.
50 Con. 133. 45 Am. Rep. 236.
Neal vs. Delaware 103 U. S. 370.
16 Pet. 536, 13 Wall 646.
1st Wood U. S. 463, and particularly on page 471.
26 Ark. Penn. vs Tillison p. 576 and further page 586.
Cooley's Const. Sim. 6th Ed. p. 44.
7 Wall. 700. 109 U. S. 3.
118 U. S. 136. Yick Woo vs. Hopkins.
20th So. Rep. p. 865.

ARGUMENT.

The Court will observe that there are several material propositions advanced by the plaintiff in error in this cas These propositions are urged, both in the motion to qua the indictment and the petition for removal. The first, is ..e criticism offered with respect to the Constitution of 1890, and the statutes regulating the suffrage provisions thereof, in this: That the present Constitution by its terms, materially changed and altered the qualifications for electors, as prescribed by the Constitution of 1869. That the present organic law ordained that there should be a registration of electors preparatory to an election to be held throughout the state in November, 1891, for members of the state legislature, and general county officers of the several counties. That at this election, by virtue of the enforcement of the recent Con-

stitution, especially its suffrage provisions, sections 240, 241, 242, 243, 244, such enforcement of said laws abridged and denied suffrage to 190,000 citizens of the United States, who had exercised suffrage under the requirements of the Constitution of 1869. That the legislature which was elected at the election of 1891, at which this 190,000 voters were denied suffrage by reason of enforcement of these recent organic provisions, assembled in 1892, and enacted the statutory provisions under the organic provisions and in enforcement thereof.

That by the enforcement of these provisions, the negro citizens of the State to the number of 190,000 were by the administrative officers of the several counties denied the right to register and become qualified voters; and that in the county of Washington, the enforcement of these laws, organic and statute, entirely excluded the plaintiff's race from the selection of the grand jury which presented the indictment upon which he was about to be, and ultimately was convicted. It is further presented by the motion to quash, that under the laws of the State, one is required to be a registered voter, before he is eligible to jury service, and a denial of registration to the negroes of the State, and of the county of Washington, by virtue of the terms, and enforcement thereof by the administrative officers of the several counties of the State, and particularly Washington county, discriminated against the race of the accused, who is a negro; and that these several sections of the Constitution of 1890, and the statutes enacted thereunder, were so enacted by the framers of the Constitution, with the intent to disfranchise the negro voters of the State, on account of their race, color, and previous condition of servitude, which conditions being that of slavery, to which the negro race of the State and their ancestors were formerly subjected in the State of Mississippi.

Now the contention here is, that the 14th amendment to the Federal Constitution provides that when any state shall abridge or deny the right to vote to male citizens of the United States over 21 years of age, not having participated in rebellion against the Federal Government, nor convicted of other crimes, at elections in the State, at which presidential electors, members of Congress, of the State Legislature, and Executive or Judicial officers are to be voted for, such State shall have its representative in Congress reduced, in

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proportion which such member so denied this right, at any elections mentioned, bear to the whole number of inhabitants in such State. The further contention here is, that as Mississippi enacted the present constitution, and enforced at the legislative election of 1891, and that at this election 190,000 citizens of the United States, who had voted under the suffrage requirements of the Constitution of 1869, and that the legislature so elected enacted the Statutes of 1892, prescribing the method of registration of electors, and the requirements and mode of selection of jurors, and these together with the Constitutional restrictions mentioned, resulted in the entire exclusion of the race of the accused from the body of voters of the State and thereby from the grand jury of the county which indicted him, and the petit jury which was summoned to try him under the indictment, and that as the State of Mississippi has not had its representative in Congress reduced, in proportion which said 190,000 voters so denied suffrage at this legislative election of 1891, bear to the whole number of inhabitants of the State; and the enforcement of these laws without complying with the stipulated condition as prescribed by the Federal Constitution in consequence thereof is illegal, void and in contraventive of the 14th Amendment of the Federal Constitution. The next proposition is, that as it is charged and proven, that these laws were enacted by the framers thereof, with the purpose and intent to discriminate against the negro voters of the State because of their race, color, and previous condition of servitude, and their enforcement has so resulted, the laws are thereby void and obnoxious to the Federal Constitution; and the accused being tried thereby, and his race improperly excluded from the jury which presented him, as well as the jury which convicted him, he was thereby denied that equal protection of the laws of the State to which he was entitled by the express terms of the Federal Constitution.

The further proposition is that the Constitution of 1890, by its express terms, provide for a change of the suffrage requirements from those prescribed by the Constitution of 1869; and that the enforcement of the present Constitution, results in the denial of suffrage to 190,000 citizens of the United States, who were eligible to elective franchise, under the Constitution of 1869; and that this change of the suffrage requirements,

with the result as proven, is in violation of the Act of Congress approved February 20, 1870, which act was for the restoration of the State of Mississippi to represention in the Congress of the United States. This act provided for the readmission of Mississippi to representation in Congress, upon the fundamental condition, that the suffrage requirements as stipulated in the Constitution of 1869, which was then approved by Congress, should never be altered or changed so as to deprive anyone of the right to vote at any election, who would be eligible to vote at such election under the Constitution then recognized; and it is confidently advanced, that in the face of this Federal Statute, the State could not enforce the suffrage provisions of the Constitution of 1890 for the reasons stated; and as the accused was indicted and tried by the grand and petit jury of Washington county, under the enforcement of these laws, and such enforcement, resulted in the entire exclusion of members of his race therefrom, he was denied equal protection of the laws, and was discriminated against, because of his race, color, and previous condition of servitude. The petition for removal contained materially the same charges alleged in the motion to quash, and will doubtless be considered together, by the court.

Section 241 of Constitution of 1890 prescribes the qualifications for electors; that residence in the State for two years, one year in the precinct of the applicant must by effected; that he is 21 years or over of age, having paid all taxes legally due of him for 2 years prior to 1st day of February of the year he offers to vote. Not having been convicted of theft, arson, rape, receiving money or goods under false pretenses, bigamy, embezzlement.

Section 242 of the Constitution provides the mode of registration. That the legislature shall provide by law for registration of all persons entitled to vote at any election, and that all persons offering to register shall take the oath; that they are not disqualified for voting by reason of any of the crimes named in the Constitution of this State; that they will truly answer all questions propounded to them concerning their antecedents so far as they relate to the applicants right to vote, and also as to their residence before their citizenship in the district in which such application for registration is made. The court readily sees the scheme. If

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the applicant swears, as he must do, that he is not disqualified by reason of the crimes specified, and that he has effected the required residence, what right has he to answer all questions which may be propounded to him concerning his antecedents. Or what right has the applicant to be sworn to answer all questions as to his former residence? Sec. 244 of Constitution requires that the applicant for registration after January, 1892, shall be able to read any section of the Constitution, or he shall be able to understand the same (being any section of the organic law), or give a reasonable interpretation thereof. Now we submit that these provisions vests in the administrative officers the full power, under section 242, to ask all sorts of vain impertinent questions, and it is with that officer to say whether the questions relate to the applicant's right to vote; this officer can reject whomsoever he choses, and register whomsoever he choses, for he is vested by the Constitution with that power. Under section 244, it is left with the administrative officer to determine whether the applicant reads, understands, or interprets the section of the Constitution designated. The officer is the sole judge of the examination of the applicant, and even though the applicant be qualified, it is left with this officer to so determine; and the said officer can reject him registration.

The charge that the franchise provisions of the present Constitution were enacted, with the intent on part of the framers, that the enforcement thereof should obstruct the exercise of suffrage by the negro race, is a fact, placed beyond dispute. The fact has been judicially affirmed by the Supreme Court of Mississippi.

Southern Reporter, Sage 865, Ratliff Sheriff vs. Beal, 74 M—p.

With reference to this opinion: We have a Constitutional provision fixing the poll tax per capita for males under 60 years of age and over 21 years at $2.00; but compulsory process to effect payment thereof is prohibited. The legislature at the 1892 session enacted a section of the code of 1892 declaring all property of a delinquent tax payer exempt from seizure and sale for such taxes. In the winter of 1896–7, the Attorney General of Mississippi rendered an opinion declaring, that for delinquent poll tax any and all property of the delinquent

was subject to seizure and sale for the payment thereof.

In order to test the correctness of this opinion, the sheriff of Hinds County seized certain personal property belonging to one Beal, a delinquent poll-tax payer, (and advertised the same for sale).

The attorneys for Beal sued out the writ of injunction, which was granted by the very able Chancellor for the Hinds County Chancery Court. The writ was granted upon the grounds, that the payment of poll tax was intended by the framers of the present Constitution to be left optional with the delinquent as to whether he paid it or not; that all property should be exempt from seizure for such delinquent tax.

The Attorney-General represented the sheriff, who in time moved the dissolution of the writ. At the hearing, the Chanlor denied the motion to dissolve, and perpetuated the restraint. The Sheriff appealed from the decree perpetuating the restraint, and thus the case was carried to the State Supreme Court. The court was required to examine into the whole purpose, and intent of the members of the Constitutional Convention, and their purpose for enacting the provisions touching the question of franchise. The court deliberated quite awhile, and evidently made a most exhaustive research of the whole history of that convention, gathered from the speeches, debates, and various proceedings upon the journal; and the conclusion reached by the court, based upon information, obtained from the most reliable sources, is announced in the following language: "Within the field of permissable action under the limitations imposed by the Federal Constitution, the convention swept the field of expedients, to obstruct the exercise of suffrage by the negro race." Going further the court said, speaking of the negro race:

"By reason of its previous condition of servitude and dependencies, this race had acquired or accentuated certain peculiarities of habit, of temperament, and of character, which clearly distinguished it as a race from the whites. A patient, docile people; but careless, landless, migratory within narrow limits, without forethought; and its criminal members given to furtive offenses, rather than the robust crimes of the whites. Restrained by the Federal Constitution from discriminating against the *negro race*, the convention discriminates against its characteristics, and the offenses to which its

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criminal members are prone." That honorable court clearly puts at rest for all time to come any question as to the purpose of the framers of the present Constitution of Mississippi. It is seen that the court alleged a reason.

Why the convention discriminated against the negro race, because it was the negro race, which is, that its previous condition of servitude caused it to acquire, or accentuate certain peculiarities of habit, of temperament, and of character; and, politically, these characteristics produce the distinguishing lines between it and the white race.

Further, the court reasons: That because of the condition arising from the previous servitude of the negro race, a result is obtained which the court saw fit to denominate as "a patient, docile, people, but careless, landless, migratory, within narrow limits, without forethought." The court says, that the convention adopted the constitution to discriminate against the negro race in the exercise of suffrage, but prohibited by the Federal Constitution; the intention does not and dare not appear upon the face of the law, the same end was accomplished by discriminating against the characteristics of the negro race, as the court says. We need not take up the valuable time of this honorable court to cite authorities, that that construction given the State statute or constitution is binding on even this court; the Mississippi Supreme Court has said plainly, the object which the convention had in enacting the franchise provisions of the constitution; the plaintiff alleges that that object has been accomplished and thereby his race was and is discriminated against in the exercise of suffrage. And the fact that one must be eligible to suffrage before he can be selected as a juror, and the negro race excluded entirely from the exercise of suffrage, works that denial, and discrimination prohibited by the express terms of the Federal Constitution. This court declared in any number of cases just the office of the Fourteenth Amendment, and what, and to whom its protecting provisions were enacted to protect.

16 Wall., 67.
50 Con., 133; 45 Am. Rep., 236.
Neal vs. Delaware, 103 U. S., 370; 16 Pet., 536.

We now ask attention to the opinion rendered in this case

by the State Supreme Court of Mississippi, page 39 record.

It will be seen that the opinion is quite exhaustive; but it will be observed that that honorable court flatly declined to pass upon the vital points tendered in the motion to quash, and for removal. It can not be said that the court did not recognize the fact that the Federal questions were seriously urged by the accused. The court keenly observed the purpose of the motion to quash the indictment, as shown from use of the following language: "The purpose of the motion seems to have been primarily to assail the validity of all the laws passed since the adoption of our present Constitution, and of the Constitution itself, on the ground that said Constitution and laws are obnoxious to the 14 Amendments to the Constitution of the United States."

We contend that if that were the purpose of the motion, and the court so clearly recognized it as such, the accused was entitled to a declaration from that court upon the soundness of the charge—yet the court refused to say—and dismissed the consideration of the motion and petition for removal by use of the following language, page 40, Rec.:

"At this point in the investigation, it is sufficient to say, that we have no power to investigate or decide upon the private individual purposes of those who framed the Constitution, the political or social complexion of the body of the Convention, and have no concern with the representation of the State in Congress." This is the terse dismissal of a question which lies at the bottom of the privileges declared by the amendment, and invoked by a poor citizen for whose protection these very provisions were enacted by the people; and even though they are swept from his grasp by pernicious state agencies, he addresses his grievances to the court in a formal manner. Yet the highest court in the State, declares it can not decide the question; while according to the highest authority, it was the duty of the court to pass upon the Constitutional question assailed by the accused. And it was a bold discrimination against the accused, by that high court itself, to so withhold its decision upon such vital questions affecting the life of the accused.

Cooley's Const. lim. 6th Ed., page 44.

"The power of the people to amend or revise their Con-

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stitutions is limited by the Constitution of the United States in the following particulars :

1st. It must not abolish a republican form of government, since such act would be revoluntionary in its character, and would call for and demand direct intervention on part of the Government of the United States.

2nd. It must not provide for titles of nobility or assume to violate the obligations of any contract, or attaint persons of crimes, or provide *ex post facto* laws for the punishment of acts by the courts which were innocent when committed, or contain any other provision, which *in effect*, amount to the exercise of any power, *expressly* or *impliedly* prohibited to the States by the Constitution of the Union. For while such provisions would not call for the direct and forcible intervention of the Government of the Union, it would be the duty of the courts, both State and National, to refuse to enforce them and to declare them altogether invalid, as much when enacted by the people in their primary capacity, as makers of the fundamental law, as when enacted in form of statutes through the delegated power of their legislatures. Subject to the foregoing principles and limitations, each State must judge for itself what provisions shall be inserted in its Constitution ; how the powers of government shall be apportioned in order to their proper exercise ; what protection shall be thrown around the person and property of the citizen ; and to what extent private rights shall be required to yield to the general good." 7 Wall., 700 : Barry, 15 Wall., 610 ; 30 Am. Law Review, 894.

At the bottom of page 40, of the Record, in the opinion of the State Supreme Court, it says: " We have searched the record in vain to discover any averment that the officers of the State charged with the duty of selecting jurors, in any manner, exercised the power devolved upon them to the prejudice of the appellant by excluding from the jury lists members of the race to which he belongs." This court will see that the accused states in his motion to quash and petition for removal, that the enforcement of these laws obstructs his race from registration; and that of itself prevents any of the negroes from being on the lists of jurors; for they must be registered first before they are eligible to jury service. The first paragraph on page 12, of the Record, shows distinctly that the averment was made in the petition for removal, both against

the laws and the acts of the officers in enforcement thereof. For if we had alleged that the negroes were excluded from the regular jury lists, that would have committed us to the proposition that we were duly registered, and of itself would have estopped us in the averment that the negroes were denied registration upon the ground of their race and color; while our principal reliance is in the charge, that the scheme of the framers of the constitution was to obstruct the suffrage of the negroes in the State by working their denial of registration and thus effect the denial to vote, as the former is a prerequisite to the latter, as a voter, as well as to be a juror.

It will be seen that the State Supreme Court sustained the trial court in this case, upon the pleadings in the case of Gibson vs. State, 162 U. S.

The accused in the Gibson case did not assail the validity of the State laws. In the case at bar, the State Court itself recognizes that the motion assails the validity of the State laws upon grounds there alleged; and the court refused to face the responsibility of deciding the question, but sought another State of case not analogous to the one at issue, and affirmed the trial court.

20 So. Rep., page 865.

This opinion of the Mississippi Supreme Court has judicially declared that the present Constitution and statutes, as enforced, have changed the franchise provisions of the Constitution of 1869, and that that change was effected for the purpose of "obstructing the exercise of suffrage by the negro race." It is indisputably proven that the desired result has been accomplished, and 190,000 negroes of the State, citizens of the United States, have been thus stricken from the body of suffrage in the State. Then when this court takes judicial notice that the act of Congress, approved February 20, 1870, by which Mississippi was readmitted to representation in Congress, expressly prohibited the State from changing the suffrage qualifications of the Constitution of 1869, which was then approved by Congress, and that that act is still in force; was in force at the time the present Constitution and laws were adopted, and still unrepealed; and that it is by

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virtue of the enforcement of these recent laws the accused was denied equal justice, and discriminated against by the exclusion of his race from the jury which indicted him, and the jury which convicted him, all on account of the race and color and previous condition of servitude thereof, we confidently insist that the violation of the Federal Constitution and laws by the State is so very pronounced that this court must so declare. It is true, the State asserts, in 69 Miss., and page 83 of the Convention Journal, that Congress had no right to have enacted such a law; that Congress had no such jurisdiction nor right to attempt to legislate on that subject; to prove the authority Congress had in the premises.

This court has repeatedly held that Congress alone has jurisdiction over the subject of readmission of the rebel States to representation in Congress, and held that the acts of Congress was the supreme law in the premises.

7 Wall., White vs. Texas.

1st Wood, U. S. 463. Marsh *et al* vs. Baroughs *et al*—and on 471, the Court says :

"They contend that the Constitution of 1868 has all the force and effect of an act of Congress, and, that therefore is not obnoxious to that clause of the Constitution of the United States which declares that no State shall pass any law impairing the obligation of the contracts; that the Constitution of 1868, has the force and effect of an act of Congress; they insist, because it was adopted under the reconstruction acts under military supervision and not by the free consent and express will of the people of Georgia, and because, after its adoption by the convention, it was revised by Congress, and certain parts were struck out, or, at least Congress made it a condition of admission that they should be struck off and that the legislature should ratify the 14th Amendment to the Constitution of the United States, and that this was in effect, an approval and adoption by Congress of the parts not excepted to."

"I can not concur in this view. What was the precise status of Georgia after the war, and before its readmission into the Union; with all the normal relations of a State, will, perhaps, never be defined to the satisfaction of all. But that

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some sort of rehabilitation was necessary in order that Georgia might occupy her old position in the Union; that the adoption of a new Constitution was one of the necessary things to be done, and that an act of the national authority, admitting Georgia to the representation and status of a State in harmonious relations with the Union, was also a necessary thing to be done, seem to be propositions that can hardly admit of doubt. This conceded, how can it be said that the adoption of the Constitution of 1868 was not the act of the people of Georgia? The courts can not do otherwise than regard it as such. This is a political question in which the courts must follow the action of the political department of the Government. To adopt any other course would be to introduce the greatest confusion."

26 Ark. Penn. *vs.* Tillison.

Quoted from page 576. "It now becomes a pertinent inquiry: Has Congress decided upon the validity of the State government attempted to be established in this State by members of the Constitutional Convention of 1861? If it has, then we are bound by our oaths and the Constitution of the United States, as construed by the Supreme Court, to recognize the action of Congress as final. By the provisions of the act of Congress passed March 2nd, 1867, to provide for the more efficient government of the rebel States, it is declared that no legal State government exists in the State of Arkansas. At the time of this declaration there was a kind of provisional government existing in the State, subject to and under the control of the military power of the United States Government. The government that had been in existence previous to the establishment of the provisional government, disappeared like the morning dew before the rays of a genial sun."

"The mere introduction of Federal troops into the States of Ohio, Indiana or Illinois, made no change in the officers of those States' government; nor did the Governors and Judges of those States flee at the approach of the emblem of American liberty," etc. Page 584, 26 Ark. "The government inaugurated under the provisions of the constitution of 1864, was provisional, and Congress of the United States never

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recognized it in any other light. It sprang into existence under the fostering care of the military arm of the Government of the United States, and but for its protection, the miasma of treason then floating in the political atmosphere, would have sent it to an early grave, instead of poisoning its life blood as it afterwards did. In 1867 Congress in looking over the States lately in rebellion found the provisional government in a languishing and dying condition: The miasma arising from the debris of the rebellion, had slowly but surely done its work. The legislative and judicial departments of the government were again filled by the same men, who less than six years before, had been instrumental in destroying the political existence of the State. Who, like so many Upas trees, were exuding into the atmosphere around the executive, a poison that was fast paralyzing all his efforts to make a loyal State of Arkansas. When Congress beheld this state of affairs, under that clause of the constitution requiring the United States to guarantee each State a republican form of government, it commenced the work of reconstruction." 63 N. Car., 140.

The record shows that the accused sufficiently proved every allegation in the motion to quash, and for removal. The trial court regarded the pleading as raising a *prima facia* case, and the State Supreme Court distinctly asserted that the proof by affidavits was ample, consistent with the law and practice in the State Courts; this is observed from the language of that court in its opinion, page 44 of Rec. "We have dealt with the case, upon the assumption that the facts set out in the motion are true. No objection was made in the court below because the proof was made by affidavits instead of by witnesses; and it is common practice in our courts, in the absence of objection, to hear affidavits on motions." Now we contend that if the facts alleged in the motion to quash, are true, which is admitted by the State Supreme Court, then this court is bound to assume that the facts are true; and we have it admitted that the present laws of the State, were enacted and enforced with the express intent to "obstruct the exercise of suffrage by the negro race." That by virtue of enforcement of these laws 190,000 colored electors, hitherto eligible to suffrage, were denied suffrage at the legislative election in the State held in November, 1891, and the rep-

resentation of the State in Congress was not, and is not reduced as provided in the 14th Amendment. It is also admitted to be true, that the present Constitution was enacted by the late convention with the intent to deny elective franchise to the colored race on account of race, color, and previous condition of servitude. Now we submit to the court that it makes no difference if the State Court did uphold the statutes pleaded in the motion, if the facts charged against the Constitution and statutes are true (which are admitted to be so by the State Supreme Court,) the enforcement of the terms thereof is a violation of the Federal Constitution, because the statutes so upheld were enacted under the void Constitution.

Yick Woo vs. Hopkins, 118 U. S. 136.

There was a certain municipal ordinance enacted by the authorities of the city of San Francisco, California, providing that all persons were prohibited from operating the laundry business within the city limits in frame buildings without grant of a permit from the Board of Supervisors. The Board of Supervisors was vested with a discretion in the matter of issuing such permit; and refused to grant any such permit to any of the China race, even though they complied with all the requirements necessary thereto; and for violation of this ordinance a certain penalty was prescribed. Yick Woo, a Chinaman, was arrested, tried, and convicted, and imprisoned for violating this ordinance. He appealed his case through the State courts regularly, and ultimately reached this court upon writ of error. This court held that the ordinance was in conflict with the provisions of the Federal Constitution, because it permitted by its terms, a discretion which could be used by the administrative authorities, to the discrimination of a class of persons, and the proof being that it was used to the discrimination of the China race; while the law did not disclose any obnoxious provisions upon its face. Yet the administration thereof, as permitted by its terms, could and had been applied to the end prohibited by the Federal Constitution, and therefore void.

Then when we prove, as here shown to be admitted by appellee, that the State laws have been administered with

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more rigor upon the negro citizens of the United States within the jurisdiction of Mississippi than upon the white citizens, and that thereby 190,000 of the negro race heretofore eligible to and enjoying suffrage are denied suffrage; and that this discrimination is made against that race because of its race, color, and previous condition of servitude, we must insist that the end prohibited by the letter as well as spirit of the Federal Constitution has been effected. The defendant in error defiantly boasts of the fact that her laws appear fair upon the face thereof. This fact is shown from the language of the very able brief of the learned Attorney-General, pages 6–7 of brief, to wit:

"We respectfully submit, that upon close inspection of those provisions of the Constitution of Mississippi challenged by the plaintiff in error, nothing can be found, not a line or word, which in any manner whatever discriminates against any citizen because of his race, color, or previous condition; and the same can be as confidently asserted of those provisions of the code of Mississippi complained of by plaintiff in error."

Further, as seen on page 7 (brief), the learned counsel says: "There is nothing in either (meaning the organic or statute laws), which, because of race, color or previous condition, disqualifies any citizen of the State from voting at any election in the State, or from sitting on the juries, or from as fully enjoying every right, benefit, and privilege which any other citizen can," etc. This is what is said in praise of the State provisions by the able counsel as to the face of her laws: But the plaintiff has proven that the laws provide an unreasonable discretion to be vested in the registrar of each county, to be exercised whenever one applies for registration; that this discretion was provided in the organic law by the framers for the purpose and intent that the enforcement thereof by the registrar in each county of the State, would effect the obstruction of suffrage to the negro race; that the enforcement of this law as provided, though apparently fair upon its face; has resulted in the denial of suffrage, as intended by the framers, and that this result was reached by administration of the said laws by its agents, with more rigor upon the negro applicants for registration than the whites; and because of this enforcement of the laws the plaintiff challenges the validity thereof as being in contravention of the Federal Constitution;

because the apparently fair law provides upon its face and permits by its terms the discretion complained of as having been enacted for the purpose complained of; and this proposition relied upon by the plaintiff in error, is fully justified by the doctrine announced by this court in Yick Woo vs. Hopkins, sheriff, 118 U. S., where, among other things, the court declared: "Though the law itself be fair on its face, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

The court will bear in mind that from the language of the 14th Amendment the sovereign people meant to secure the whole people against the deprivation of the rights therein conferred; and doubtless had an eye to the possibility of a State enacting laws apparently fair upon the face thereof, yet permit from the terms thereof the denial of such privileges by the administration of such laws; for the amendment forbids, not only the enactment of discriminating laws, but the enforcement of any State law which will by such enforcement, work the deprivation prohibited. If this was not their purpose, why should any reference be made against the enforcement of any such laws, as well as the enactment thereof? Verily the people meant to secure these rights to the people, and threw around them every protection so as to meet every conceivable scheme on part of the States to deny them, by enacting laws fair upon the face thereof, yet so framed, that their enforcement will permit the evil prohibited by the people, as expressed in this amendment.

Yet in the face of this amendment, and the act of Congress approved February 20, 1870. Mississippi, in 1890, disputed the right Congress had to enact that law with the terms stated as a condition subsequent to be observed by her people; and boldly renounced any binding farce thereof. The accused had no other way open to him to envoke the protection guaranteed him except to formally challenge the validity of the laws under which he was about to be, and was tried and condemned to die. And as a result he asks this court to secure him in the right to be accorded a fair trial for the offense charged. This

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branch of the general Government is the duly constituted agent of the people to execute their decree. The spirit therof as well as the letter. The principles invoked in this cause are as firm as our great government. This is no technicality, but an appeal to the judiciary of the country that the vindication of the Federal Constitution and laws should be most emphatic for its generosity and unswerving constancy.

CORNELIUS J. JONES,
Attorney for Plaintiff in Error.

No. 531.
Petition for Rehearing.

Distributed May 17, 1898.

IN THE

Supreme Court of the United States,

APPLICATION FOR REHEARING

IN THE CASE OF

HENRY WILLIAMS

No. 531. VS.

THE STATE OF MISSISSIPPI.

CORNELIUS J. JONES,
Attorney for Plaintiff.

HAYWORTH PUBLISHING HOUSE, WASHINGTON, D. C.

IN THE

Supreme Court of the United States,

APPLICATION FOR REHEARING

IN THE CASE OF

HENRY WILLIAMS

No. 531. VS.

THE STATE OF MISSISSIPPI.

Now comes the plaintiff in error in this cause and respectfully petitions the Court that the judgment of affirmance rendered by this Court be set aside, and a rehearing therein granted.

Your petitioner would state, that this honorable Court stated in the opinion rendered herein, (page 8 of the opinion, second paragraph) "nor is there any sufficient allegation of an evil and discriminating administration of them," (the laws page 6 of the opinion) the Court said: "The *only* allegation is by granting a discretion to the said officers as mentioned in the several sections of the Constitution, the use of which discretion can be and has been used by said officers in the said Washington County to the end here complained of, to wit: the abridgment of the elective franchise of the colored voters of Washington County; that such citizens are denied the right to be selected as jurors to serve in the Circuit and other courts of the county, and that this denial to them of the right to equal protection, and benefit of the laws of the State of Mississippi, is on account of their race, resulting from the

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exercise of the discretion partial to the white citizens, is in accordance with, and the intent of the framers of the present Constitution of the State." And this charge being the only one considered by the Court, thus causing the Court to characterize the averments quoted, as wholly insufficient to charge the administrative officers with having exercised the discretion so invested in them, to the discrimination of the colored race. Plaintiff alleges, that if he is given a rehearing of this cause, he will be able to show the Court that the allegation mentioned in the opinion as the *only* allegation, though overlooked by the Court, is not the *only* allegation. But that he will show of Record, which the Court inadvertently overlooked, that the plaintiff's motion further charged, (26th line, page 5 of Record to line 34) that "it is the enforcement of all these laws, for the reasons aforesaid, that the defendant has been by this proceeding deprived of the immunity prescribed by the letter and spirit of the Federal Constitution, 14th Amendment thereof; and the enforcement of the State Constitution and Statutes aforesaid, and the discretion purposely provided therein to be exercised by certain officers therein mentioned, abridges the right of defendant, and the rights of 190,000 negroes of the State, citizens of the United States to vote." Petitioner will be able to establish the further averments in the motion (at line 31, of page 6 of Record, to line 35,) "that the said laws were so framed and enacted as complained of for the specific purpose of depriving the majority of citizens and electors of the State of the full free and impartial enjoyment of the right of elective franchise because of their previous condition of servitude," etc.

Petitioner will further show that the following further averment is of Record, (in petition for removal, line 30, page 10 of Record, to line 41,) "the use of which discretion can be, has been, and is being used by certain officers of the county and State to the end designed and intended by the makers of the said laws at the time of said enactment thereof, and as here complained of, to wit: abridgment of election franchise of the colored voters of the State and county aforesaid, thereby denying to the colored citizens of the State and county aforesaid, the opportunity of being impartially listed and se-

lected to serve as jurors in the Circuit and other courts of the county. That this denial to them of equal protection of the laws of the State of Mississippi is on account of their race and color, and the said discretion is not used with equal rigor against the white applicants for registration and voting, by the officers of the law." It will be shown of Record, (second line from bottom of page 11 to 6th line, page 12 of Record,) the further averment "that by the virtue of the exercise of such discretion as provided in the Constitution and Statutes aforesaid, which discretion is to be exercised by certain officers therein named, was purposely provided in the organic law, "that other than the use of said discretionary power by said officers, with the intent aforesaid, said colored citizens would satisfy the other requirements even of the new Constitution of 1890 and Statutes enacted thereunder." (Line 7, page 12 to line 10.) "The accused is by force of the laws and acts of the officers in the enforcement, thereof, deprived of that equal protection of the laws of the State to which he is entitled under the 14th Amendment to the Federal Constitution." The Record shows that in petition for removal plaintiff further averred; (page 13, line 43–46,) "that the enforcement of said laws in said manner, and for said purposes did result in abridgment of the right of suffrage to a majority of the voters of the State, to the number aforesaid, all being citizens of the United States," and further averred; "And relator cannot enforce his rights to a full, fair, legal trial in said State Courts." Petitioner states that as these further allegations are apparent upon the face of the record, that they will establish that degree of sufficiency which the Court held was wanting in the only allegation quoted in the opinion. Petitioner further states, that the State Courts considered the allegations of the pleadings touching Constitutionality of the State Constitution, and affirmatively held that according to the common practice in the State Courts, the averment and proof supporting the pleadings were considered ample, and dealt therewith upon the assumption that they were true. But the State Supreme Court held that it had no jurisdiction over the questions touching the Constitutional challenges of the accused, that is, it had no concern therewith. The

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Court did not elect, between the Constitutional challenges and the charges, with respect to the Statutes as to the method of selecting jurors, and affirmed the case upon the construction of the State Statute upon such election, but the Court assigned a reason for not dealing with the former, being, that it (the Court) had no jurisdiction over the question presented. But the sufficiency and proof as to the averments were positively admitted by that Court, and the judgment of affirmance of this Court will be inconsistent with the practice of the State Courts and reverse that judgment, upon a matter which was never put in issue in the State Courts, but under the admitted local practice, the said matters were certified here as true by the highest Court in the State; and this Court will not reopen matters which are admitted by all parties below.

The Court has doubtless been misled, (possibly by the opinion of the State Supreme Court,) and decided this case upon another erroneous conception of a fact,(page 7 of opinion.) This Court stated that it gathered from plaintiff's motion that the election officers were vested with certain discretion in making up lists of jurors, and that this discretion can be, and has been exercised against the colored race; and that the State Supreme Court decided that jurors are not selected with reference to any lists furnished by such election officers. Relator avers that this Court is (honestly) in error as to such statement in the motion. The lists of jurors under the then existing law, was taken from the registration roll of the county by the Board of Supervisors; and certified to the circuit clerk of the county, who, by law, is the registrar of the county, and this officer is charged with the duty of preparing the jury box with the names so certified. Now as the law requires that these names should be taken from the registration book of voters, instead of from the registration roll, and the further fact that the managers of election should be the judges of qualifications of voters offering to vote, even though they are duly registered, the plaintiff stated that, as the law provided no method by which a list of such persons passed upon by the election managers were to be obtained, (the election managers being sole judge of qualifications of voters) the list

taken from the registration roll simply, was not the character of roll contemplated by the terms of the statute providing for selection of jurors. And this is quite a different light in which plaintiff's statement should be considered.

Relator calls attention to another misapprehension, which doubtless influenced the Court. The Court asserted in the opinion, that the duty of voluntary payment of taxes, would be one of the means of preventing the attainment of any sinister result by administration of the laws as alleged to have been intended. Petitioner avers that, that section of the Code of 1892, which makes payment of taxes a pre-requisite to registration as an elector, has been declared void by the State Supreme Court and by the just administration and enforcement of the laws, tax payment shall not be exacted as a condition to registration. Plaintiff avers that the County registrar is the chief jury Commissioner of Washington County; and the record shows charges against all the administrative officers, and particularly the registrar who exercises the discretion vested in him to the discrimination of the negroes, and partiality to the white citizens: that is the white men were admitted registration, and made eligible to jury service, while the colored race ~~were~~ *was* denied the same even though its members complied with the terms of the present Constitution and statutes all which will be found of record. Petitioner avers, that this application is not made for the purpose of hindrance or delay, but upon the fact that there were overlooked by the Court, certain material matters, a careful review of which must, in the light of the vast number of authorities conduct the court to a different judgement. Therefore relator prays that he may be heard by the Court, and allowed an opportunity to tender authorities which will show that judgement should be reversed.

Respectfully submitted,

CORNELIUS J. JONES,
Attorney for Plaintiff in error.

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DISTRICT OF COLUMBIA,
WASHINGTON CITY.

This day personally appeared before me, the undersigned, acknowledging officer in and for said District and City, C. J. Jones, attorney for Henry Williams in the case No. 531, filed in Supreme Court of the United States, who being first duly sworn deposes and says that he prepared the forgoing petition for rehearing, and that the facts therein stated are true and correct as stated to the best of his information, knowledge and belief.

C. J. JONES,

Sworn to and subscribed this the 12th day of May, 1898.

EDWARD P. BURKET,

[SEAL] *Notary Public.*

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No. 531.

Brief of Jones for P. C. on pet'n for rehearing.

Distributed May 17, 1897.

IN THE

Supreme Court of the United States,

APPLICATION FOR REHEARING

IN THE CASE OF

HENRY WILLIAMS

No. 531. VS.

THE STATE OF MISSISSIPPI.

Brief of Plaintiff in Error.

CORNELIUS J. JONES,
Attorney for Plaintiff.

HAYWORTH PUBLISHING HOUSE, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States,

APPLICATION FOR REHEARING

IN THE CASE OF

HENRY WILLIAMS

No. 531. VS.

THE STATE OF MISSISSIPPI.

Plaintiff informs the Court, that under the laws of Mississippi, no person is eligible to jury service unless he is duly registered. The Supreme Court of Mississippi (unintentionally), did the accused a striking injustice in the rendition of the opinion, by stating a certain matter as charged in the motion to quash the indictment, which (we beg leave to say) is not charged; and the statement that it is charged, materially changes plaintiff's position in the principles contended for: (page 41 Rec.—first sentence) (page 41 of Record). "He" (plaintiff) "did not intend to charge by the motion, that the officers by whom the grand jury was selected violated the law, but that they were by the law, under which they acted, required to select jurors from certain lists furnished them by the officers charged with the duty of holding elections in the State, and that these election officers in making such lists discriminated against the race of appellant. In this view the motion was properly denied, for the reason that jurors are not selected from or with reference to any list furnished by such election officers."

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This Court will see, that from the opinion of the State Court, the judgment of affirmance is based upon only one fact; that is, that the motion to quash was properly overruled upon what the Court said; "In this view the motion was properly denied." We are free to admit that no such law exists, and plaintiff states, with the greatest consideration for our Honorable State Supreme Court, that no such charge is apparent upon plaintiff's motion to quash the indictment. The State Court was misled in this assertion, the plaintiff's position was mistaken, and this being "the view" taken by the State Court, influenced it to affirm the judgment of the trial court. It is seen from the language of this Court (on page 7 of the opinion), that the same misapprehension prevailed with this Court at the former consideration of this case. The State Court erred in its conception of the allegation of plaintiff's motion to quash the indictment, and this Court labored under a serious misapprehension as to that feature of the motion. And if plaintiff can convince this Court (~~Which it be~~ from the Record), that it was mistaken in a material fact upon which the judgment was rendered, out of judicial magnanimity, the error will be corrected.

Now as to the correctness of plaintiff's position as to this allegation in the motion, we must take the record. It must be conceded that it is upon this one point the State Court affirmed the trial Court. The Record shows that that Court declared, that as to the other questions it had no jurisdiction, by the following language (page 40 of Record.) "At this point in the investigation it is sufficient to say, that we have no power to investigate or decide upon the private individual purposes of those who framed the Constitution, the political or social complexion of the body of the Convention, and have no concern with the representation of the State in Congress." The State Court arrived at this conclusion after having considered every allegation of the motion, and petition for removal. The Court did not question the sufficiency of the pleadings nor the proof supporting the same. The Supreme Court did not go behind the record of the pleadings and proof, which were admitted in the trial Court. That Court indorsed the pleadings as consistent with the practice in the

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State in the following words, (page 44 of Record:) "we have dealt with the case upon the assumption that the facts set out in the motion are true. No objection was made in the Court below because the proof was made by affidavits instead of witnesses, and it is common practice in our Courts, in the absence of objection, to hear affidavits on motions." This admission of the State Court must bind this Court upon matters which were not put in issue in trial Court, as effectual as the State Supreme Court felt itself bound thereby. Plaintiff has searched in vain for a single case where this Court has ever gone behind the admissions of the parties in the State Courts and questioned the sufficiency of pleading and proof which were admitted to be true by the parties charged.

This fact settled, we find that the Court affirmed the judgment of the State Court, upon alleged statement of the accused in motion to quash the indictment. As to the jury list furnished by the election officers, plaintiff asks the Court to read his motion (page 3 of Record) in the light of the following facts: Section 3644 of Code 1892 makes the managers of election at the various precincts, judges of the qualifications of electors, even though said electors are duly registered. Therefore, although there is a registration roll in the county, it is not a *prima facia* roll of voters in the county. The reason is, because after persons are duly registered, they must pass the judgment of the election managers before they can vote, as provided in Section 3644, Code 92.

The Court will see from Section 2358 of Code 1892, that the legislature provided that at a certain time there mentioned, the Board of Supervisors should select a list of persons to serve as jurors for each respective term of Court. And that in selecting the list of persons to serve as jurors, the Board of Supervisors should use as a guide the Registration book of voters. The point aimed at by plaintiff's motion is, that as the election officers are by the law made judges of qualifications of electors, though such electors are duly registered, that the law (Section 2358) providing that the Board of Supervisors should use as a guide in selecting jurors, the registration book of voters, that thereby the registration books of

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the county were not the *prima facia* registration books of *voters*. And that as there was no law providing the mode of procuring a list of such as had been passed upon by the election managers, as such adjudged, the list selected by the Board of Supervisors from the registration book of the county was not valid. The Statutes of the State are ambiguous on this subject and plaintiff sought the advantage of attacking the list of jurors selected from the registration books simply, while the law had provided no mode of preparing registration books of voters, yet at the same time required the list to be taken from that source. The motion does not show any such charge as influenced the State Court page 41 of Record (for the motion shows the following:) "That there is no registration book of voters prepared for the guidance of said officers at the time said grand jury was drawn. *That there is no Statute providing for the procurement of any registration book of voters.*" That Court erroneously assumed a fact to be of Record in the motion, which did not exist. Yet from the very language of the Court, that fact is the one upon which it affirmed the judgment of the trial Court, because after stating what it assumed to be the allegation, and announced its conclusion thereupon, the Court said: "*In this view* the motion was properly denied." Under what view? Under the view that the motion alleged that the officers charged with listing jurors at that term of the Court, by the law under which they acted, were required to select such jurors from certain lists furnished to them by the officers charged with the duty of holding elections in the State; and that these election officers in making such lists discriminated against the race of appellant. That Court was in error in considering any such statement, for no such appears anywhere upon the whole Record. But we find that this Court was misled and affirmed the judgment of the Supreme Court upon the same misconception of a fact, (page 7 of opinion.) "We gather from statements of the motion that certain officers are invested with discretion in making up list of electors; and that this discretion can be, and has been exercised against the colored race, and from these lists jurors are selected. The Supreme Court of Mississippi however decided

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in a case presenting the same questions as the one at bar, that jurors are not selected with reference to any lists furnished by such election officers."

This is a great injustice to both this Court and to the accused. We beg pardon therefore but must state that, he made no such allegation in the motion to quash. Yet this Court was unsuspectingly misled by the statement made in the opinion of the State Court. Plaintiff cannot dare suggest what influenced the Honorable State Court to state such to be a fact, but there is one positive declaration that no such fact exists. And the judgment of affirmance is erroneous because based upon erroneous grounds, which a review of the motion will clearly show.

The next error plaintiff respectfully calls attention of the Court to is, that on page 6 of the opinion, this Honorable Court states that the *only* allegation of any discriminative acts of the administrative officers, is the allegation quoted on that page in second paragraph. Of course it is conceded that that is the only allegation the Court considered; and thereupon declared it insufficient to establish the fact of discrimination by the administrative officers. Plaintiff insists now as formerly stated in this brief, that as the State Courts admitted the sufficiency of the allegations of the motion, and under the proof offered, the facts therein alleged were assumed to be true, and in harmony with the practice in the State Courts, the questions of sufficiency and proof were not in issue in the State Courts, and it is against the policy of this Court to question the sufficiency of pleadings and proof which are admitted by the parties. In Neal vs. Delaware this Court held, that as the motion to quash the indictment was not supported by separate affidavits the proof was not sufficient; but as there was an agreement between the attorney for the accused and the Attorney General, that the motion should be considered as if proper affidavits were attached, this Court considered itself bound by the agreement of the parties in the trial Court, and did not inquire into the question of proof sufficiency.

In the case of Gibson vs. Mississippi, 162 U. S., this Court held that the plaintiff's allegations were sufficient, but

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as no separate affidavits supported the motion, and unlike the Delaware case, in, that no agreement was had in the trial Court between the State's counsel and the accused, therefore the motion could not be considered as if the necessary affidavits were attached: the case was affirmed for the want of proof. In the case at ~~the~~ bar, we have the pleadings supported by just that character of proof which this Court said was wanting in the Gibson case which proof is admitted by the trial and Supreme Court of the State to be true, and in accordance with the State practice; still this Court goes behind the admisssions of the parties below, behind the common practice in the State Courts generally, and declares pleadings and proof in this cause insufficient, although, according to the State practice, such allegations and proof are sufficient. In proceeding in the State Courts the parties are required to adhere to that practice, and when this Court practically reverses the State practice by overruling pleadings and proof which according to the State practice are admitted by the party charged, there will be no substantial practice in the State upon which parties can rely; and each case will have to be determined upon its own exigency; but if the Court will insist upon this ruling, with respect to the allegation quoted in the opinion as the only allegation, and that that allegation is insufficient, we feel certain that if we call attention to other more precise allegations in the motion which were unintentionally overlooked, the Court out of a spirit of substantial justice will correct the injury which its present judgement is certain to inflict upon the accused. The Court overlooked the further allegation of the motion, which reads as follows: "it is the enforcement of all these laws, for the reasons aforesaid, that the defendant has been by this proceeding deprived of the immumity prescribed by the letter and spirit of the Federal Constitution, 14th ammendment thereof, and the discretion purposely provided therein to be exercised by certain officers therein mentioned, abridges the rights of defendant, and the rights of 190,000 negroes of the State, citizens of the United States to vote." "That the said laws were so framed and enacted as complained of, for the specific purposes of depriving the majority of citizens and electors, of the State, of the full, free

and impartial enjoyment of the right of elective franchise, because of their previous condition of servitude," etc. Further alleged; "The use of which discretion can be, has been and is being used by certain officers of the County and State to the end designed and intended by the makers of the said laws at the time of said enactment thereof, and as here complained of to wit: abridgement of the elective franchise of the colored voters of the State and County aforesaid, thereby denying to the colored citizens of the State aforesaid the opportunity of being impartially listed and selected to serve as jurors in the circuit and other courts of the County. That this denial to them of equal protection of the laws of the State of Mississippi is on account of their race and color and the said discretion is not used *with equal rigor against the white applicants for registration and voting by the officers of the law.*"

Further, "That by virtue of the exercise of such discretion as provided in the Constitution and Statutes aforesaid, which discretion is to be exercised by certain officers, therein named, was purposely provided in the organic law, which other than the use of said discretionary power by the said officers, with the intent aforesaid, said colored citizens would satisfy the other requirements even of the new Constitution of 1890 and statutes enacted thereunder. The accused is by force of the laws and acts of the officers in the enforcement thereof, deprived of that equal protection of the laws of the State to which he is entitled under the 14th amendment to the Federal Constitution. Relator cannot enforce his right to a full, fair, legal trial in said State courts."

The Court will find that the allegations quoted were overlooked. Plaintiff urges the Court to give him the benefit of a rehearing, that these material charges shall be considered as well as the one allegation upon which the Court based its former judment. We judge from the opinion that this Court is impressed that it is the nonpayment of taxes by the colored citizens which largely marks the disfranchisement so bitterly complained of; But when the Court considers, the additional averments of the pleadings, it will be seen that the accused alleged that other than the unjust discrimination against his

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race by virtue of the evil exercise of the vested discretion by the officers of the law, the colored citizens would satisfy the requirements even of the present Constitution. This Court cannot question this allegation, especially when it is admitted by the State court to be true.

The next point is, that it is the refusal to register the colored electors which keeps their names off the registration books; and under the custom, the list of jurors are taken from the registration roll of the County at a certain time, by the Board of Supervisors. And the complaint is made against the registrar in wrongfully refusing these people registration. This registrar is under the law the chief jury commission in preparing the jury box with names and drawing the names therefrom, for each term of court.

The next erroneous impression is, that the applicant for registration must have paid all taxes due as provided before he can be registered. This is an error. The State Supreme Court has long decided that the Section of the Code requiring the prepayment of taxes for registration, was unconstitutional; therefore the tax feature of the law would operate against one offering to cast his vote on election day, but not at the registrar's office, when he applies for registration: and as it is the registration book used for jury selection, it is clearly shown, that the jury manipulators are not required to exclude the colored race from their selection of jurors, for the registrar has done that job long beforehand by simply refusing to register its members. And it is the unlimited discretion imposed in this officer by the laws, which vests in him the power to discriminate against the colored race. The scheme works in two ways: The refusal to register the colored electors denies them the right to jury service also the privilege of voting.

Plaintiff informs the Court, that under section 242 of the Constitution, the registrar of the several counties is the principal agent by whom the scheme of restricting the negro suffrage of the respectives counties is to be accomplished. That section prescribes that the applicant for registration must first, make oath that he possesses all the specific qualifications mentioned in section 241; that is, that he has not been

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convicted of the crimes mentioned, has effected the desired residence, and other specifications.

The applicant must also swear to answer all questions propounded to him concerning his antecedents so far as they relate to his right to vote. What are the antecedents, about which the administrative officer is here empowered to interrogate the applicant! If the applicant has sworn to all the qualifications specially required of him by the Constitution, and if the framers of the Constitution meant that this discretionary examination by the registrar, should (as this Court declared) "reach weak and vicious white men as well as weak and vicious black men." Why is it that the specific facts as touch the applicant's antecedents, were not specified upon the face of the law; that the such applicant might know where the end of the ordeal was, as well as he is informed by the law, of the qualifications required? It is admitted that the specific qualifications as required of the voter, do apply in terms to the "weak and vicious" of both races: but by the averements of plaintiff's motion, it will be seen that the specific qualifications are not complained of.

If the exercise of suffrage by all persons who could come up to the specified qualifications were all that the framers intended, the examination should terminate after the oath concerning them was made by the applicant. But no; even after the gauntlet has been thus run by the dusky applicant for registration, the Constitution provides that he must swear to answer all questions pertaining to (the unkown of course) his antecedents so far as they relate to his right to vote. This Court does not undertake to say that the registrar does not vary the examination of applicants for registration so as to carry out the intention of the framers of the law; especially when the contrary is charged in the pleadings and judicially declared by the State court, just what were the intentions of the framers of the law at the time of enactmeat. This honorable Court however, has held that "there is nothing tangible" in the fact that the Supreme Court held, that assuming to act "within the circles of permissible action under the limitation of the Federal Constitution" the convention sought to effect a means of obstructing

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the exercise of suffrage by the negro race: not "the weak and viscious white men and the weak and vicious black men," but in the language of the Court of last resort in the State, the purpose was to obstruct the exercise of a right by one race, and not of the other race. The question presents itself just at this point as to whether limitations placed upon the negro race because of its race and color by any character of State legislation is "permissible under the limitations of the Federal constitution."

Having briefly called the notice of the Court, to the important contentions unintentionly overlooked by this honorable Court, and the mistake as to the charge made in plaintiff's motion, and the erroneous conclusions, based upon the erroneous assumption of a fact, that the motion contained the charge as to the jury list, as noted in this brief, it is hoped, and plaintiff prays, that the Court will grant a rehearing in this matter, that substantial justice may be done the accused.

Respectfully submitted,

CORNELIUS J. JONES,
Attorney for Plaintiff in Error.

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The Supreme Court of the United States.

October Term, 1897.

HENRY WILLIAMS, PLAINTIFF IN ERROR.

No. vs.

THE STATE OF MISSISSIPPI, DEFENDANT IN ERROR.

BRIEF FOR THE STATE OF MISSISSIPPI.

In this case the record discloses the following facts:

Henry Williams, plaintiff in error, was indicted by the grand jury of the County of Washington in the State of Mississippi at the May Term 1896 of the Circuit Court for the murder of one Eliza Brown. On the 15th day of June following the plaintiff in error, Henry Williams, entered a motion before said Circuit Court to quash said indictment because the laws of the State of Mississippi by which the grand jury which returned the indictment into Court was selected, organized and charged are unconstitutional and repugnant to the spirit and letter of the Constitution of the United States, and especially to the 14th amendment thereof. Appellant in his motion to quash said indictment specially charges that sections 241—242 and 244 of article 12, and section 264 of article 14 of the present Constitution of the State of Mississippi, adopted by the Constitutional Convention in 1890, and sections 3643—3644 and 2358 of Code of Mississippi of 1892 are repugnant to the Constitution of the United States in this, that they discriminate against the colored race, of which race appellant is a member—that they abridge the elective franchise of the colored

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race, because of their race, color and previous condition of servitude—and also their right to be selected as jurors, and to serve as such in the Courts of the State of Mississippi, because of their race, color and previous condition—and that they deprive appellant and others of his race of the equal benefit and protection of the laws of the State of Mississippi, because of their race, color and previous condition, and that the right which the 14th amendment of the Constitution of the United States guaranteed to him and his race, are abridged and denied him by the aforesaid articles of the Constitution of the State of Mississippi and the aforesaid laws thereof, and that they are therefore violative of the Constitution of the United States.

This motion to quash the indictment was overruled by the Court below.

Appellant then presented to the Court his petition asking that this case be transferred from the State Court to the United States Circuit Court for the Western division of the Southern district of Mississippi, and to support this motion to transfer, presented substantially the same causes which he offered in support of his motion to quash the indictment.

The Court below also overruled this motion, and denied the petition to transfer the case.

The trial of the case was then proceeded with in said Circuit Court upon its merits, and the jury returned into Court a verdict of guilty as charged in the indictment.

Whereupon the plaintiff in error entered his motion to set aside the verdict so rendered against him, and to grant him a new trial, and in support of said motion assigned the following causes:

1st. Because the verdict is contrary to the law and the evidence.

2nd. Because under the law the question of overt demonstration by the deceased, and apprehension of danger therefrom on the part of the accused, was never disproved or put in issue by the State, and under the instructions of the Court on that point the jury was not warranted in bringing the defendant in guilty as charged.

3rd. Because the Court erred in overruling the defendants objection to the testimony of Addie Brown, and permitting the District Attorney to argue the fact concerning a pistol defendant showed her, and erred in refusing to instruct the jury not to consider such fact.

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4th. The Court erred in refusing to instruct the jury not to consider argument of District Attorney that deceased carried her money in her stocking, and that the defendant killed her and stripped the stocking down over the deceased's foot and took the money therefrom when there was no such evidence in the case.

5th. The Court erred in refusing to instruct the jury not to consider the confession testified to by witness, I. M. Muckle, because the state failed to show that the said confession by the accused was free and voluntary, and granting the first instruction for the State.

6th. The Court erred in overruling the motion to quash the indictment, and also erred in denying the petition for the removal of the trial into the United States Circuit Court.

—This motion for a new trial was by the Court overruled—

Whereupon the plaintiff in error, Henry Williams, was by the Court, sentenced to be hung by the Sheriff of said county of Washington on the 30th day of July 1896.

The plaintiff in error then appealed his case to the Supreme Court of the State of Mississippi, in which last named Court said case was heard and by said Court the judgment of the Court below was affirmed on the 9th day of November 1896, and the plaintiff in error, Henry Williams, was on the said 9th day of November 1896, by the said Supreme Court of the State of Mississippi, sentenced to be hung by the Sheriff of the said county of Washington on the 10th day of December, 1896.

And to this judgment of the Supreme Court of the State of Mississippi, the plaintiff in error has obtained a writ of error from this honorable Court in order that the action of the said Supreme Court of the State of Mississippi may be reviewed.

Thus we see that there are really but two questions presented by the record in this case which this honorable Court will consider.

1st. The Action of the Court below in overruling appellant's motion to quash the indictment against him.

2nd. The action of the Court below in denying appellant's application for transfer of the case from the State Court to the United States Court.

As the grounds for both motions are substantially the same, we will consider them together.

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We respectfully submit that the question for this honorable Court to decide is whether or not sections 241—242 and 244 of article 12, and section 264 of article 14 of the present Constitution of the State of Mississippi, and sections 2358—3643 and 3644 of the present Code of Mississippi (1892) conflict with or are repugnant to the Constitution of the United States, and especially the 14th amendment thereof.

The three sections of article 12 of the Constitution of the State of Mississippi above referred to read as follows:

Section 241. "Every male inhabitant of this State except idiots, insane persons and Indians not taxed, who is a citizen of the United States, twenty one years old and upwards, who has resided in this State two years, and one year in the election district, or in the incorporated city or town in which he offers to vote, and who is duly registered as provided in this article, and who has never been convicted of bribery, burglary, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement or bigamy, and who has paid, on or before the 1st day of February of the year in which he shall offer to vote, all taxes which may have been legally required of him, and which he has had an opportunity of paying according to law for the two preceding years, and who shall produce to the officer holding the election satisfactory evidence that he has paid said taxes, is declared to be a qualified elector; but any minister of the Gospel in charge of an organized church shall be entitled to vote after six months residence in the election district, if otherwise qualified."

Section 242. "The legislature shall provide by law for the registration of all persons entitled to vote at any election, and all persons offering to register shall take the following oath or affirmation: I..... ....do solemnly swear (or affirm) that I am twenty one years old (or I will be before the next election in this county) and that I will have resided in this State two years and..... election district of.....county one year next preceding the ensuing election (or if it be stated in the oath that the person proposing to register is a minister of the Gospel in charge of an organized church, then it will be sufficient to aver therein two years residence in the State and six months in said election district) and am now in good faith a resident of the same, and that I am not disqualified from voting by reason of having been convicted of any crime named in the constitution of this State as a disqualification to be an elector; that I will truly answer all

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questions propounded to me concerning my antecedents so far as they relate to my right to vote and also as to my residence before my citizenship in this district; that I will faithfully support the Constitution of the United States and of the State of Mississippi, and will bear true faith and allegiance to the same. So help me God. In registering voters in cities and towns not wholly in one election district the name of such city or town may be substituted in the oath for the election district. Any wilfull and corrupt false statement in said affidavit, or in answer to any material question propounded as herein authorized shall be perjury."

Section 244. "On and after the first day of January A. D. 1892, every elector shall, in addition to the foregoing qualifications, be able to read any section of the Constitution of this State; or he shall be able to understand the same when read to him, or give a reasonable interpretation thereof. A new registration shall be made before the next ensuing election after January the 1st A. D. 1892."

Section 264 of Article 14 of the Constitution of the State of Mississippi, above referred to, reads as follows:

Section 264. "No person shall be a grand or petit juror unless a qualified elector and able to read and write; but the want of any such qualification in any juror shall not vitiate any indictment or verdict. The legislature shall provide by law for procuring a list of persons so qualified, and the drawing therefrom of grand and petit jurors for each term of the Circuit Court."

The three Sections of the Code of 1892 of the State of Mississippi, above referred to, read as follows:

Section 2358. How list of jurors procured—"The Board of Supervisors at the first meeting in each year, or at a subsequent meeting if not done at the first, shall select and make a list of persons to serve as jurors in the Circuit Court for the next two terms to be held more than thirty days afterwards, and as a guide in making the list, they shall use the registration books of voters; and it shall select and list the names of qualified persons of good intelligence, sound judgment and fair character, and shall take them as nearly as it conveniently can from the several election districts in proportion to the number of the qualified persons in each, excluding all who have served on the regular pannell within two years, if there be not a deficiency of jurors."

Section 3643. Managers of election appointed.—

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"Prior to every election the commissioners of election shall appoint three persons for each election district to be managers of the election, who shall not all be of the same political party, if suitable persons of different political parties can be had in the district, and if any person appointed shall fail to attend and serve, the managers present, if any, may designate one to fill his place, and if the commissioners of election fail to make the appointments, or in case of the failure of all those appointed to attend and serve, any three qualified electors present when the polls should be opened may act as managers."

Section 3644. Duties and powers of managers.—"The managers shall take care that the election is conducted fairly and agreeably to law, and they shall be judges of the qualifications of electors, and may examine on oath any person duly registered and offering to vote touching his qualifications as an elector, which oath any of the managers may administer."

We respectfully submit to this honorable Court that neither of the Sections of the Constitution of the State of Mississippi, above mentioned, in any manner whatever conflicts with the 14th amendment to the Constitution of the United States, nor is in any manner repugnant thereto, nor does either of the sections of the Code of the State of Mississippi, above referred to. It really does appear to us that the questions thus presented by the record in this case are scarcely open to argument, but that they have been fully decided and adjudicated by this honorable Court in favor of appellee and against appellant in several different cases, among which we cite the cases of Charlie Smith vs. the State of Mississippi—U. S. Reports No. 162 p. 592, and Gibson vs. the State of Mississippi—U. S. Reports No. 162 p. 565, and Dixon vs. the State of Mississippi, also Neal vs. Delaware, U. S. Reports No. 103 p. 370.

Andrews vs. Swartz, U. S. Reports, No. 156 p. 272-276.

Bergeman vs. Backer, U. S. Reports, No. 157 p. 655-659.

Virginia vs. Rieves, U. S. Reports, No. 100 p. 313.

Strauder vs. West Virginia, Reports, No. 100 p. 303.

Ex parte Virginia Reports, No. 100 p. 339.

We respectfully submit that upon close inspection of those provisions of the Constitution of the State of Mississippi, challenged by Plaintiff in error, nothing can be found, not a line or word, which in any manner whatever discriminates against any citizen because of his race, color or previous condition, and the same can be as confidently

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asserted of those provisions of the Code of Mississippi complained of by plaintiff in error. Not a word or line in either of them, by any reasonable construction, can be deemed obnoxious to any part of the Constitution of the United States or any law thereof. We think we can confidently assert that the present Constitution of the State of Mississippi nowhere contains a single provision which if fairly interpreted can be held to be obnoxious or repugnant to any provision of the Constitution of the United States or to any law thereof; nor is there a single provision in any statute of Mississippi which can reasonably be so construed. There is nothing in either incompatible with any right or privilege or immunity guaranteed to the colored race by the Constitution of the United States. There is nothing in either which because of race, color or previous condition disqualifies any citizen of the State from voting at any election in said State, or from sitting on the juries, or from as fully enjoying every right, benefit and privilege which any other citizen can; indeed no distinction whatever can be found in either as between the individual white man and the individual colored man, but equal rights, privileges and immunities are guaranteed to all alike, and I presume it will not be contended that the State of Mississippi has not the exclusive jurisdiction to regulate the right of suffrage and the right to serve as jurors, if in so doing she does not in any manner discriminate against any citizen on account of race, color or previous condition of servitude.

In the case of Charlie Smith vs the State of Mississippi, 162 U. S. Reports page 592, above referred to, Mr. Justice Harlan in delivering the opinion of the Court in which it was held that the petition to remove the case from the State Court to the United States Court was properly denied says: "Neither the Constitution nor the laws of the State of Mississippi by their language reasonably interpreted, or as interpreted by the highest Courts of the State show that the accused was denied or could not enforce in the judicial tribunals of the State or in the part of the State where such suit or prosecution was pending any right secured to him by any law providing for the equal civil rights of citizens of the United States or of all persons within the United States.

In the case of Gibson vs the State of Mississippi, 162 U. S. reports p-566 the Court uses the following language: "But they do not support the application for the removal

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of this case from the State Court in which the indictment was found, for the reason that neither the Constitution of Mississippi nor the statutes of that State prescribe any rule for or mode of proceedure in the trial of criminal cases which is not equally applicable to all citizens of the United States and to all persons within the jurisdiction of the State, without regard to race, color or pevious condition of servitude." Further on in the same case the Court says: "But when the Constitution and laws of a State as interpreted by its hightest judicial tribunal do not stand in the way of the enforcement of rights secured equally to all citizens of the United States, the possibility that during the trial of a particular case the State Court may not respect and enforce the right to the equal protection of the laws constitutes no ground under the statute for removing the prosecution into the Circuit Court of the United States in advance of the trial." And in the same case the Court say: "The conduct of a criminal trial in a State Court can not be reviewed in this Court unless the trial is had under some statute repugnant to the Constitution of the United States, or was so conducted as to deprive the accused of some right of immunity secured to him by that instrument. Mere error in administering the criminal law of a State, or in the conduct of a criminal trial no Federal right being invaded or denied, is beyond the revisory power of this Court under the statutes regulating its jurisdiction. Citing.

Andrews vs. Swartz, 156 U. S. Reports p. 272-276.

Bergeman vs. Backer, 157 U. S. Reports, p. 655-659.

Indeed it would not be competent for Congress to confer such power upon this or any other Court of the United States."

This Honorable Court held in the case of Neal vs. Delaware, 103 U. S. Reports, page 370, that the 14th Amendment to the Constitution of the United States was broader in its operations than Section 641 of the revised statutes providing for the removal of cases from the State Courts to the Federal Courts.

It can not be successfully contended that a citizen has the right to remove his case from a State Court to the Federal Court unless the State in which the trial is to be had, has since the adoption of the 14th Amendment to the Constitution of the United States enacted some law in violation of or repugnant to said amendment, and it will always be presumed that every constitutional right of the

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citizen will be legally observed, carefully protected, and duly enforced in all the State Courts, and if any right which is secured by the Constitution of the United States is disregarded by the State Court, the remedy for the enforcement of these rights is in the Supreme Court of the United States by writ of error.

Neal vs. Delaware, 103 U. S. Reports page 370.

Strauder vs. West Virginia, 100 U. S. Report, p. 103.

Virginia vs. Rieves, 100 U. S. Reports, page 313.

Ex parte Virginia, 100 U. S. Reports, page 339.

Therefore there being nothing in any provision of the Constitution of the State of Mississippi or any of the laws of said State which conflicts with any provision of the Constitution of the United States or any law thereof, the application to remove this case from the State Court to the Federal Court was properly denied, and the motion to quash the indictment properly over-ruled.

The plaintiff in error contends that he should have been indicted and tried by juries selected under the Constitution of the State of Mississippi adopted in 1869, and under the laws of the Code of Mississippi of 1880; that the present Constitution of Mississippi and the laws in pursuance thereof are null and void because the present Constitution adopted in 1890 was never submitted to the people for approval or rejection.

We respectfully submit that this position is untenable because this question has been submitted to and has been passed upon and adjudicated by the Supreme Court of the State of Mississippi in the case of Sproule vs. Fredericks, 69th Mississippi Reports, page 898, in which case that Court decided that it was entirely competent and proper for the Convention which framed the present Constitution of the State of Mississippi to put it into operation without submitting it for ratification to a vote of the people, and this decision of the Supreme Court of the State of Mississippi is conclusive on this point, because the decisions of the highest Courts of a State in construing its own Constitution and laws are conclusive.

Randall vs. Brigham, 7 Wall, page 541.

Provident Institution vs. Mass., 6 " page 630.

We submit therefore that it was right and proper that the accused should have been indicted and tried by juries selected under the present Constitution and laws of the State of Mississippi, and that it would have been error to have done otherwise.

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But even if the right claimed by the Plaintiff in error to be indicted by a grand jury and tried by a petit jury selected as provided by the Code of 1880, and this claim is founded on Section 283 of the present State Constitution; certainly no Federal Question is involved and no right of his which is guaranteed to him by the Constitution of the United States or any law thereof is brought in issue. Because as above said the Supreme Court of the State of Mississippi has settled this question and as to this is conclusive.

Randall vs. Brigham, 7 Wall 541.

As all the questions which are presented by the record in this case for decision and as every provision of the Constitution of the State of Mississippi and every law thereof which is challenged by the plaintiff in error in this case were passed upon and adjudicated by the Supreme Court of the State of Mississippi in the case of John Dixon vs. the State of Mississippi on the 9th day of November 1896, and as the Supreme Court of said State of Mississippi in affirming the judgment of the Court below in this case which we are now considering announces the fact that this cause is construed by the opinion this day delivered by Chief Justice Cooper in the case of John Dixon vs. the State. I here now beg leave to incorporate in my brief the able and elaborate opinion of Chief Justice Cooper in the above named case of John Dixon vs. the State of Mississippi, which reads as follows:

Dixon vs. the State.

Supreme Court of Mississippi, Nov. 9th 1896.

Cooper, C. J.—"The appellant has been indicted, convicted and sentenced to imprisonment for life for the murder of one Nancy Minor. In the Court below the defendant made a motion to quash the indictment, and when the motion was overruled, he moved for a transfer of the cause from the State to the Federal Court. This motion was also denied. The action of the Court in refusing to quash the indictment and in denying the petition for a transfer of the cause constitute the principal errors assigned. The motion and petition set out in effect the same facts; and affidavits of several persons were filed that the matters therein stated were, as affiants believed true. The purpose of the motion seems to have been primarily to assail the validity of all the laws passed since the adoption of our recent Constitution and of that Constitution itself, on the ground that said Constitution and laws are obnoxious to the 14th Amendment to the Constitution of the United States. The mo-

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tion is too long to be inserted in this opinion. It states some facts, many inferences and deductions and an argument to show that the conditions resulting from the adoption of the Constitution are incompatible with the rights guaranteed to the colored race by the 14th Amendment. Compressed within reasonable limits the substance of the motion is that the Constitutional Convention was composed of one hundred and thirty-four members, of which one hundred and thirty-three were whites and one only a negro; that the purpose and object of said Constitution was to disqualify by reason of their race, color and previous condition of servitude one hundred and ninety thousand negro voters; that the Constitution was not submitted to a vote of the people, and that the representation of the State in Congress has not been reduced as it should have been upon the disqualification of so great a number of voters; that Sections 241, 242 and 244 of the Constitution of this State are in conflict with the 14th Amendment of the Constitution of the United States because they vest in administrative officers the power to discriminate against citizens by reason of their color; and that the purpose of so investing such officers with such power was intended by the framers of the State Constitution to the end that it should be used to discriminate against the negroes of the State. We will recur to the contents of the motion hereafter for the purpose of considering such averments as seem more nearly related to the subject under investigation, viz. The competency and legality of the grand jury by which the indictment against appellant was returned. At this point in the investigation it is sufficient to say that we have no power to investigate or decide upon the private individual purpose of those who framed the Constitution, the political or social complexion of the body of the Convention, and have no concern with the representation of the State in Congress. We can deal only with the perfected work, the written Constitution adopted and put in operation by the Convention. We have heretofore decided that it was competent for the Convention to put the Constitution in operation without submitting for ratification by a vote of the people.

Sproule vs. Fredericks, 69 Miss. 898.

We find nothing in the Constitutional provisions challenged by the appellant which discriminate against any citizen by reason of his race, color, or previous condition of servitude. Section 241 declares who are qualified electors, Section 242 makes it the duty of the legislature to provide for the registration of persons entitled to vote, and

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Section 244 declares that "On and after the first day of January A. D. 1892 every elector shall in addition to the foregoing qualifications be able to read any Section of the Constitution of this State: or he shall be able to understand the same when read to him or give a reasonable interpretation thereof. A new registration shall be made before the next ensuing election after January the first A. D. 1892."

All these provisions if fairly and impartially administered apply with equal force to the individual white and negro citizen. It may be and unquestionably is true that so administered their operation will be to exclude from the exercise of the elective franchise a greater proportionate number of colored than of white persons. But this is not because one is white and the other is colored but because of superior advantages and circumstances possessed by the one race over the other, a greater number of the more fortunate race is found to possess the qualifications which the framers of the Constitution deemed essential for the exercise of the elective franchise.

We have searched the record in vain to discover any averment that the officers of the State charged with the duty of selecting jurors in any manner exercised the power devolved upon them to the prejudice of the appellant by excluding from the jury list members of the race to which he belongs. The motion contains much irrelevant matter set up with great prolixity and in obscure language. But repeated and careful examination conducts us to the conclusion that much of its seeming obscurity vanishes when we read the motion in the light of the opinion entertained by counsel as to how the supposed discrimination has been made. He did not intend to charge by the motion that the officers by whom the grand jury was selected violated the law, but that they were by the law under which they acted required to select jurors from certain lists furnished to them by the officers charged with the duty of holding elections in the State and that these election officers in making such lists discriminated against the race of appellant. In this view the motion was properly denied for the reason that jurors are not selected from or with reference to any lists furnished by such election officers. No such list is required to be made or used in selecting jurors nor does the motion distinctly charge that any such was returned to the officers charged with the duty of selecting jurors and by them used. The motion is based on the assumption that such list was essential to the selection of the grand jury and without it no jury could be drawn, and that the list was made by discriminating against the negro race. Our laws in reference

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to elections and in reference to the selection of grand and petit juries are totally distinct. To be an elector or to serve upon a jury one must be registered as a voter. But the acts and doings of those charged with holding elections can exercise no influence upon those by whom juries are selected. One may be denied the right to vote by the election officers and yet be permitted to sit upon juries grand or petit; and one may be inelligible to sit upon a jury and yet qualified and permitted to vote. By Section 241 of the Constitution it is provided that "Every male inhabitant of this State except idiots, insane persons and Indians not taxed, who is a citizen of the United States, twenty one years old and upward, who has resided in this State two years and one year in the election district or in the incorporated city or town in which he offers to vote, and who is duly registered as provided in this article, and who has never been convicted of bribery, burglary, theft, arson, obtaining money or goods under false pretenses, perjury, embezzlement or bigamy, and who has paid on or before the first day of February of the year in which he shall offer to vote all taxes which may have been legally demanded of him and which he has had an opportunity of paying according to law for the two preceding years and who shall produce to the officer holding the election satisfactory evidence that he has paid said taxes, is declared to be a qualified elector; but any minister of the gospel in charge of an organized church shall be entitled to vote after six months residence in the election district if otherwise qualified." Section 264 declares who shall be qualified as jurors. It is as follows: "No person shall be a grand or petit juror unless a qualified elector and able to read and write; but the want of any such qualifications in any juror shall not vitiate any indictment or verdict. The legislature shall provide by law for procuring a list of persons so qualified and the drawing therefrom of grand and petit jurors for each term of the Circuit Court." It is not necessary that one desiring to register shall have paid his taxes as prescribed by Section 241. That has to do with voting and not registration.

Bew vs. the State, 71 Miss., 1.

One who has registered and has in fact paid his taxes although he has not offered to vote and therefore has not produced to the officers holding an election satisfactory evidence of such payment, and who can read the Constitution (Mabry vs. the State, 71 Miss., 716) and write is qualified under the Constitution to sit as a juror. It is true that Section 241 in declaring who are electors seemingly imposes

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as an essential qualification that the elector not only shall have paid his taxes, but also shall have produced satisfactory evidence thereof to the officers holding an election. But the Section must have a reasonable and sensible construction Registration and payment in fact of the taxes as prescribed are the substantial things required to qualify one as an elector. Proof of the fact that taxes have been paid to the satisfaction of the election officers is also required when the elector comes to vote; but when he is presented as a juror such payment is proved before the Court and not by the fact that he has been permitted to vote. If in truth he has paid his taxes and possesses the other requisite qualifications, the fact that he has never offered to vote and therefore has never produced "to the officers holding an election satisfactory evidence that he has paid said taxes", or if offering to vote has failed to satisfy the officers that he has paid taxes does not render him inelligible as a juror.

Section 2358 of the Code provides how the jury list shall be made. It provides that "the Board of Supervisors at the first meeting in each year or at a subsequent meeting if not done at the first, shall select and make a list of persons to serve as jurors in the Circuit Court for the next two terms to be held more than thirty days afterwards, and as a guide in making the list, they shall use the registration list of voters, and it shall select and list the names of qualified persons of good intelligence, sound judgment and fair character, and shall take them as nearly as it conveniently can from the several election districts, in proportion to the number of qualified persons in each, excluding all who have served on the regular pannel within two years, if there be not a deficiency of jurors." It is from the list thus made that grand and petit jurors are drawn. The Sections of the Code under which the appellant claims that he was discriminated against have relation, not to the selection of juries, but to the subject of registration and voting; and his contention is not that persons entitled to register were denied registration by the registrar, but that the managers of elections are by the law made judges of the qualifications of electors offering to vote and have denied to persons qualified to vote the right so to do. Conceding this to be true we fail to perceive in what manner the appellant has been injured. The managers are required to supervise the election and are authorized to examine on oath any person duly registered and offering to vote touching his qualifications as an elector. They are the judges of the qualifications of such persons and they may deny the right to vote to one not entitled though he be registered. But they have no power to strike the name of such person from the

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books nor to put any additional names thereon. The registration book of the County does not go into the possession of the managers of the election, but they are furnished with poll books which contain the names of the registered voters in the district, copied from or made cotemporaneously with the registration book. As votes are cast one of the clerks of the election takes down on a list the names of the voters, while the other enters a check upon the poll book opposite the name of such person; and at the close of the election the votes are counted and the result declared. And the statute provides that "the statement of the result of the election district shall be certified and signed by the managers and clerks, and the poll books, tally lists, list of voters, ballot boxes and ballots shall all be delivered as required to the commissioners of election." Code Section 3670. This is the only list known to us that the law requires to be made by the officers. It does not show or purport to show who are qualified electors but only who have voted; and it has no relation except to matters connected with the election and performs no function in reference to the selection of jurors. The Boards of Supervisors by which bodies jury lists are made never see these lists. They are returned and dealt with by the election commissioners, a wholly different body, and so if it be true that the managers of elections have discriminated against colored voters, and unlawfully denied them the right to vote, it does not appear how the appellant has been deprived of any advantage or protection afforded to him either by the Constitution or laws of this State or by the Constitution of the United States. There is no suggestion in this motion that the jury commissioners were guilty of any fraud or discrimination in selecting the jurors. If in truth there was no registration book in the county to guide them in their selection of the jurors, their action in making the jury list was irregular, and upon objection made before the grand jury was empannelled the pannel would have been quashed.

Purvis vs. the State (Miss.,) 14 South, 268.

But our statute provides that "before swearing any grand juror as such he shall be examined by the Court on oath touching his qualifications: and after the grand jurors shall have been sworn and empannelled, no objections shall be raised by plea or otherwise to the grand jury: but the empannelling of the grand jury shall be conclusive evidence of its competency and qualification: but any party interested may challenge or except to the array for fraud."

Head vs. the State, 44 Miss., 731.

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Durrah vs. the State, 44 Miss , 789.

In Neal vs. Delaware, 103 U. S. 370, and Gibson vs. State of Mississippi, 162 U. S. 565., the Supreme Court of the United States has thoroughly discussed the subject of the right of a negro to the impartial protection of the law, and has clearly expressed the circumstances under which, and the means by which that right is to be vindicated. If by the Constitution or laws of the State negroes are by reason of their race, color or previous condition of servitude, excluded from juries or in such other manner discriminated against as that fair and impartial trial can not be had in the State Courts, then a negro proceeded against in the Courts of the State may have his cause removed to the Courts of the United States for trial. If there is no discrimination by the law but the complaint is that by the act of the officers of the State, charged with the administration of fair and impartial laws, discrimination has been made against the race, the defendant may not have a removal of his cause, but must make his defense in the State Courts, and appeal from the final judgment of the Supreme Court of the State to the Supreme Court of the United States. In Gibson vs. the State of Miss. Supra, the Supreme Court of the United States declared that neither the Constitution nor laws of this State prescribed any rule for, or mode of proceedure in the trial of criminal cases which is not equally applicable to all citizens of the United States, and to all persons within the jurisdiction of the State, without regard to race, color or previous condition of servitude. We can discover nothing in the record which shows that the appellant either by the laws of this State or by their administration, has been denied the right of a fair and impartial trial. The motion to quash the indictment, and for removal of the case were properly overruled. We have dealt with the case upon the assumption that the facts set out in the motion are true. No objection was made in the Court below because the proof was made by affidavits instead of by witnesses, and it is common practice in our Courts in the absence of objection to hear affidavits on motions.

The error assigned touching the action of the Court in admitting evidence of the State of feeling of appellant towards the woman, Lavinia, at whom the shot was fired that killed Nancy Minor is not maintainable. The defendant himself on cross examination of the witness, Eliza Minor, drew out this evidence. But aside from this the evidence was entirely competent as tending to show quo animo the fatal shot was fired. The judgment is affirmed."

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Thus we see that every question presented by the record in this case has been fully adjudicated by the Supreme Court of the State of Mississippi against the contention of the plaintiff in error and in favor of defendant in error, and we also respectfully submit that the judgment of the Supreme Court of Mississippi on all these points has been approved by this honorabl Court in the decisions above referred to and others.

In the case of Virginia vs. Rieves, 100, U. S. 319-320, above referred to Mr. Justice Strong uses the following language: "It is evident therefore that the denial or inability to enforce in the judicial tribunals of the State rights secured to a defendant by any law providing for the equal civil rights of all persons of the United States, of which Section 641 speaks is primarily if not exclusively a denial of such rights or an inability to enforce them resulting from the Constitution or laws of the State rather than a denial first made manifest at the trial of the case, in other words, the statute has reference to a legislative denial or inability resulting from it. The statute was not therefore intended as a corrective of errors or wrongs committed by judicial tribunals in the administration of the law at the trial."

Mr. Justice Field in delivering his separate opinion in the same case page 333 says: "The denial of rights or the inability to enforce them to which the Section refers is in my opinion such as arises from legislative action of the State. If any executive or judicial officer exercises power with which he is not invested by law, and does unauthorized acts the State is not responsible for them. The action of the judicial officer in such a case where the rights of a citizen under the laws of the United States are disregarded, may be reviewed and corrected or reversed by this Court, it can not be imputed to the State so as to make it evidence that she in her sovereign or legislative capacity denies the rights invaded or refuses to allow their enforcement."

So we contend that the doctrine laid down in these decisions interpreting, construing and defining the operation, purpose and effect of Section 641 of the revised statutes in connection white the 14th Amendment to the Constitution of the United States has been fully adjudicated and settled by this honorable Court.

Just here in this connection we would respectfully call the attention of this honorable Court to the facts as alleged and sworn to by plaintiff in error in this case; both in his motion to quash the indictment against him and in his petition to remove his case from the State Court to the United

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States Court. Plaintiff in error does not assert, charge or complain that any provision of the Constitution of the State of Mississippi, or any provisions of any law thereof has been violated by any one at any time or place either in letter or in spirit; but on the contrary alleges repeatedly that these provisions of the State Constitution and laws of the State of which he complains, have all been enforced according to the letter and intention thereof. He says that the legislature which was elected in 1891 and which enacted the laws complained of was elected in pursuance of the Constitution and that the election itself was held in pursuance thereof: he also says that it is the enforcement of these laws that denies to him and his race their rights, and not the violation of them, or the failure to enforce them.

He also says that the present Constitution and laws of the State of Mississippi of which he complains give to certain officers certain discretion, and then alleges that this discretion has been exercised in accordance with the letter and intention of the law, and nowhere charges that said discretion has been abused.

He also says that the present Constitution of the State of Mississippi authorized the legislature of the State to enact certain laws in order to enforce or carry out the organic law, and that the legislature of 1892 enacted the laws complained of in strict compliance with the Constitution of the State, and that it is the enforcement of all these laws that deprives him of his rights, and it is really because of the enforcement of both the organic and statute laws of the State of Mississippi that he here seeks relief, and not on account of the violation of either or any of them.

It is true that plaintiff in error has a good deal to say as to the motives which actuated the framers of these laws; we think the surest way to arrive at their motive is by a proper Construction and interpretation of the laws themselves, and these laws have been favorably construed by all the Courts in the country, and simply to impugn the motives of the action of a sovereign State is no argument whatever and we think should not be indulged in without sufficient grounds therefor.

We therefore respectfully submit that the record in this case presents to this Honorable Court for decision, this one question—are the provisions of the present Constitution of the State of Mississippi, or of the present Code of Mississippi, above referred to and set out and which plaintiff in error complains of, in conflict with the Constitution

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of the United States or the laws thereof? According to the authorities above cited we confidently answer in the negative, and respectfully submit that this case should be affirmed.

C. B. MITCHELL,
ATTORNEY FOR STATE OF MISSISSIPPI.

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WILLIAMS *v.* MISSISSIPPI.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

No. 581. Argued and submitted March 18, 1898. — Decided April 25, 1898.

The provisions in section 241 of the constitution of Mississippi prescribing the qualifications for electors; in section 242, conferring upon the legislature power to enact laws to carry those provisions into effect; in section 244, making ability to read any section of the constitution, or to understand it when read, a necessary qualification to a legal voter; and of section 264, making it a necessary qualification for a grand or petit juror that he shall be able to read and write; and sections 2358, 3643 and 3644 of the Mississippi Code of 1892, with regard to elections, do not, on their face, discriminate between the white and negro races, and do not amount to a denial of the equal protection of the law, secured by the Fourteenth Amendment to the Constitution; and it has not been shown that their actual administration was evil, but only that evil was possible under them.

At June term 1896 of the Circuit Court of Washington County, Mississippi, the plaintiff in error was indicted by a grand jury composed entirely of white men for the crime of murder. On the 15th day of June he made a motion to quash the indictment, which was in substance as follows, omitting repetitions and retaining the language of the motion as nearly as possible:

Now comes the defendant in this cause, Henry Williams by name, and moves the Circuit Court of Washington County, Mississippi, to quash the indictment herein filed and upon

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which it is proposed to try him for the alleged offence of murder: (1) Because the laws by which the grand jury was selected, organized, summoned and charged, which presented the said indictment, are unconstitutional and repugnant to the spirit and letter of the Constitution of the United States of America, Fourteenth Amendment thereof, in this, that the Constitution prescribes the qualifications of electors, and that to be a juror one must be an elector; that the Constitution also requires that those offering to vote shall produce to the election officers satisfactory evidence that they have paid their taxes; that the legislature is to provide means for enforcing the Constitution, and in the exercise of this authority enacted section 3643, also section 3644 of 1892, which respectively provide that the election commissioners shall appoint three election managers, and that the latter shall be judges of the qualifications of electors, and are required "to examine on oath any person duly registered and offering to vote touching his qualifications as an elector." And then the motion states that "the registration roll is not *prima facie* evidence of an elector's right to vote, but the list of those persons having been passed upon by the various district election managers of the county to compose the registration book of voters as named in section 2358 of said code of 1892, and that there was no registration books of voters prepared for the guidance of said officers of said county at the time said grand jury was drawn." It is further alleged that there is no statute of the State providing for the procurement of any registration books of voters of said county, and (it is alleged in detail) the terms of the constitution and the section of the code mentioned, and the discretion given to the officers, "is but a scheme on the part of the framers of that constitution to abridge the suffrage of the colored electors in the State of Mississippi on account of the previous condition of servitude by granting a discretion to the said officers as mentioned in the several sections of the constitution of the State and the statute of the State adopted under the said constitution, the use of said discretion can be and has been used in the said Washington County to the end complained of." After some detail to the

same effect, it is further alleged that the constitutional convention was composed of 134 members, only one of whom was a negro; that under prior laws there were 190,000 colored voters and 69,000 white voters; the makers of the new constitution arbitrarily refused to submit it to the voters of the State for approval, but ordered it adopted, and an election to be held immediately under it, which election was held under the election ordinances of the said constitution in November, 1891, and the legislature assembled in 1892 and enacted the statutes complained of, for the purpose to discriminate aforesaid, and but for that the "defendant's race would have been represented impartially on the grand jury which presented this indictment," and hence he is deprived of the equal protection of the laws of the State. It is further alleged that the State has not reduced its representation in Congress, and generally for the reasons aforesaid, and because the indictment should have been returned under the constitution of 1869 and statute of 1889 it is null and void. The motion concludes as follows: "Further, the defendant is a citizen of the United States, and for the many reasons herein named asks that the indictment be quashed, and he be recognized to appear at the next term of the court."

This motion was accompanied by four affidavits, subscribed and sworn to before the clerk of the court, on June 15, 1896, to wit:

1st. An affidavit of the defendant, "who, being duly sworn, deposes and says that the facts set forth in the foregoing motion are true to the best of his knowledge, of the language of the constitution and the statute of the State mentioned in said motion, and upon information and belief as to the other facts, and that the affiant verily believes the information to be reliable and true."

2d. Another affidavit of the defendant, "who, being first duly sworn, deposes and says: That he has heard the motion to quash the indictment herein read, and that he thoroughly understands the same, and that the facts therein stated are true, to the best of his knowledge and belief. As to the existence of the several sections of the state constitution, and the

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several sections of the state statute, mentioned in said motion to quash, further affiant states: That the facts stated in said motion, touching the manner and method peculiar to the said election, by which the delegates to said constitutional convention were elected, and the purpose for which said objectionable provisions were enacted, and the fact that the said discretion complained of as aforesaid has abridged the suffrage of the number mentioned therein, for the purpose named therein; all such material allegations are true, to the best of the affiant's knowledge and belief, and the fact of the race and color of the prisoner in this cause, and the race and color of the voters of the State whose elective franchise is abridged as alleged therein, and the fact that they who are discriminated against, as aforesaid, are citizens of the United States, and that prior to the adoption of the said constitution and said statute the said State was represented in Congress by seven Representatives in the lower House, and two Senators, and that since the adoption of the said objectionable laws there has been no reduction of said representation in Congress. All allegations herein, as stated in said motion aforesaid, are true to the best of affiant's knowledge and belief."

3d. An affidavit of John H. Dixon, " who, being duly sworn, deposes and says that he had heard the motion to quash the indictment filed in the *Henry Williams case*, and thoroughly understands the same, and that he has also heard the affidavit sworn to by said Henry Williams, carefully read to him, and thoroughly understands the same. And in the same manner the facts are sworn to in the said affidavit, and the same facts alleged therein upon information and belief, are hereby adopted as in all things the sworn allegations of affiant, and the facts alleged therein, as upon knowledge and belief, are made hereby the allegations of affiant upon his knowledge and belief."

4th. An affidavit of C. J. Jones, " who, being duly sworn, deposes and says that he has read carefully the affidavit filed in the *John Dixon case* sworn to by him (said C. J. Jones), and that he, said affiant, thoroughly understands the same, and adopts the said allegations therein as his deposition in

this case upon hearing this motion to quash the indictment herein, and that said allegations are in all things correct and true as therein alleged."

The motion was denied and the defendant excepted. A motion was then made to remove the cause to the United States Circuit Court, based substantially on the same grounds as the motion to quash the indictment. This was also denied and an exception reserved.

The accused was tried by a jury composed entirely of white men and convicted. A motion for a new trial was denied, and the accused sentenced to be hanged. An appeal to the Supreme Court was taken and the judgment of the court below was affirmed.

The following are the assignments of error:

1. The trial court erred in denying motion to quash the indictment, and petition for removal.

2. The trial court erred in denying motion for new trial, and pronouncing death penalty under the verdict.

3. The Supreme Court erred in affirming the judgment of the trial court.

The sections of the constitution of Mississippi and the laws referred to in the motion of the plaintiff in error are printed in the margin.[1]

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[1] The three sections of article 12 of the constitution of the State of Mississippi above referred to read as follows:

Section 241. "Every male inhabitant of this State except idiots, insane persons and Indians not taxed, who is a citizen of the United States, twenty-one years old and upwards, who has resided in this State two years, and one year in the election district, or in the incorporated city or town in which he offers to vote, and who is duly registered as provided in this article, and who has never been convicted of bribery, burglary, theft, arson, obtaining money or goods under false pretences, perjury, forgery, embezzlement or bigamy, and who has paid, on or before the 1st day of February of the year in which he shall offer to vote, all taxes which may have been legally required of him, and which he has had an opportunity of paying according to law for the two preceding years, and who shall produce to the officer holding the election satisfactory evidence that he has paid said taxes, is declared to be a qualified elector; but any minister of the Gospel in charge of an organized church shall be entitled to vote after six months' residence in the election district, if otherwise qualified."

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Counsel for Parties.

Mr. Cornelius J. Jones for plaintiff in error.

Mr. C. B. Mitchell, for defendant in error, submitted on his brief.

Section 242. "The legislature shall provide by law for the registration of all persons entitled to vote at any election, and all persons offering to register shall take the following oath or affirmation: 'I, ———, do solemnly swear (or affirm) that I am twenty-one years old (or I will be before the next election in this county) and that I will have resided in this State two years and ——— election district of ——— county for one year next preceding the ensuing election (or if it be stated in the oath that the person proposing to register is a minister of the Gospel in charge of an organized church, then it will be sufficient to aver therein two years' residence in the State and six months in said election district) and am now in good faith a resident of the same, and that I am not disqualified from voting by reason of having been convicted of any crime named in the constitution of this State as a disqualification to be an elector; that I will truly answer all questions propounded to me concerning my antecedents so far as they relate to my right to vote, and also as to my residence before my citizenship in this district; that I will faithfully support the Constitution of the United States and of the State of Mississippi, and will bear true faith and allegiance to the same. So help me God.' In registering voters in cities and towns not wholly in one election district the name of such city or town may be substituted in the oath for the election district. Any wilful and corrupt false statement in said affidavit, or in answer to any material question propounded as herein authorized shall be perjury."

Section 244. "On after the first day of January, A.D. 1892, every elector shall, in addition to the foregoing qualifications, be able to read any section of the constitution of this State; or he shall be able to understand the same when read to him, or give a reasonable interpretation thereof. A new registration shall be made before the next ensuing election after January the first, A.D. 1892."

Section 264 of article 14 of the constitution of the State of Mississippi, above referred to, reads as follows:

Section 264. "No person shall be a grand or petit juror unless a qualified elector and able to read and write; but the want of any such qualification in any juror shall not vitiate any indictment or verdict. The legislature shall provide by law for procuring a list of persons so qualified, and the drawing therefrom of grand and petit jurors for each term of the Circuit Court."

The three sections of the Code of 1892 of the State of Mississippi, above referred to, read as follows:

Section 2358. How list of jurors procured. — "The board of supervisors at the first meeting in each year, or a subsequent meeting if not done at the first, shall select and make a list of persons to serve as jurors in the Circuit

Opinion of the Court.

MR. JUSTICE MCKENNA, after stating the case, delivered the opinion of the court.

The question presented is, are the provisions of the constitution of the State of Mississippi and the laws enacted to enforce the same repugnant to the Fourteenth Amendment of the Constitution of the United States? That amendment and its effect upon the rights of the colored race have been considered by this court in a number of cases, and it has been uniformly held that the Constitution of the United States, as amended, forbids, so far as civil and political rights are concerned, discriminations by the General Government, or by the States, against any citizen because of his race; but it has also been held, in a very recent case, to justify a removal from a state court to a Federal court of a cause in which such rights are alleged to be denied, that such denial must be the result of the constitution or laws of the State, not of the administration of them. Nor can the conduct of a criminal trial in a state court be reviewed by this court unless the trial is had under some statute repugnant to the Constitution of the United

Court for the next two terms to be held more than thirty days afterwards, and as a guide in making the list, they shall use the registration books of voters; and it shall select and list the names of qualified persons of good intelligence, sound judgment and fair character, and shall take them as nearly as it conveniently can from the several election districts in proportion to the number of the qualified persons in each, excluding all who have served on the regular panel within two years, if there be not a deficiency of jurors."

Section 3643. Managers of election appointed. — "Prior to every election the commissioners of election shall appoint three persons for each election district to be managers of the election, who shall not all be of the same political party, if suitable persons of different political parties can be had in the district, and if any person appointed shall fail to attend and serve, the managers present, if any, may designate one to fill his place, and if the commissioners of election fail to make the appointments, or in case of the failure of all those appointed to attend and serve, any three qualified electors present when the polls should be opened may act as managers."

Section 3644. Duties and powers of managers. — "The managers shall take care that the election is conducted fairly and agreeably to law, and they shall be judges of the qualifications of electors, and may examine on oath any person duly registered and offering to vote touching his qualifications as an elector, which oath any of the managers may administer."

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States, or was so conducted as to deprive the accused of some right or immunity secured to him by that instrument. Upon this general subject this court in *Gibson* v. *Mississippi*, 162 U. S. 566, 581, after referring to previous cases, said: "But those cases were held to have also decided that the Fourteenth Amendment was broader than the provisions of section 641 of the Revised Statutes; that since that section authorized the removal of a criminal prosecution before trial, it did not embrace a case in which a right is denied by judicial action during a trial, or in the sentence, or in the mode of executing the sentence; that for such denials arising from judicial action after a trial commenced, the remedy lay in the revisory power of the higher courts of the State, and ultimately in the power of review which this court may exercise over their judgments whenever rights, privileges or immunities claimed under the Constitution or laws of the United States are withheld or violated; and that the denial or inability to enforce in the judicial tribunals of the States rights secured by any law providing for the equal civil rights of citizens of the United States to which section 641 refers and on account of which a criminal prosecution may be removed from a state court, is primarily, if not exclusively, a denial of such rights or an inability to enforce them resulting from the constitution or laws of the State rather than a denial first made manifest at or during the trial of the case."

It is not asserted by plaintiff in error that either the constitution of the State or its laws discriminate in terms against the negro race, either as to the elective franchise or the privilege or duty of sitting on juries. These results, if we understand plaintiff in error, are alleged to be effected by the powers vested in certain administrative officers.

Plaintiff in error says:

"Section 241 of the constitution of 1890 prescribes the qualifications for electors; that residence in the State for two years, one year in the precinct of the applicant, must be effected; that he is twenty-one years or over of age, having paid all taxes legally due of him for two years prior to 1st day of February of the year he offers to vote. Not having

been convicted of theft, arson, rape, receiving money or goods under false pretences, bigamy, embezzlement.

"Section 242 of the constitution provides the mode of registration. That the legislature shall provide by law for registration of all persons entitled to vote at any election, and that all persons offering to register shall take the oath; that they are not disqualified for voting by reason of any of the crimes named in the constitution of this State; that they will truly answer all questions propounded to them concerning their antecedents so far as they relate to the applicant's right to vote, and also as to their residence before their citizenship in the district in which such application for registration is made. The court readily sees the scheme. If the applicant swears, as he must do, that he is not disqualified by reason of the crimes specified, and that he has effected the required residence, what right has he to answer all questions as to his former residence? Section 244 of the constitution requires that the applicant for registration after January, 1892, shall be able to read any section of the constitution, or he shall be able to understand the same (being any section of the organic law), or give a reasonable interpretation thereof. Now we submit that these provisions vest in the administrative officers the full power, under section 242, to ask all sorts of vain, impertinent questions, and it is with that officer to say whether the questions relate to the applicant's right to vote; this officer can reject whomsoever he chooses, and register whomsoever he chooses, for he is vested by the constitution with that power. Under section 244 it is left with the administrative officer to determine whether the applicant reads, understands or interprets the section of the constitution designated. The officer is the sole judge of the examination of the applicant, and even though the applicant be qualified, it is left with the officer to so determine; and the said officer can refuse him registration."

To make the possible dereliction of the officers the dereliction of the constitution and laws, the remarks of the Supreme Court of the State are quoted by plaintiff in error as to their intent. The constitution provides for the payment of a poll

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tax, and by a section of the code its payment cannot be compelled by a seizure and sale of property. We gather from the brief of counsel that its payment is a condition of the right to vote, and in a case to test whether its payment was or was not optional, *Rateliff* v. *Beale*, 20 So. Rep. 865, the Supreme Court of the State said: "Within the field of permissible action under the limitations imposed by the Federal Constitution, the convention swept the field of expedients, to obstruct the exercise of suffrage by the negro race." And further the court said, speaking of the negro race: "By reason of its previous condition of servitude and dependencies, this race had acquired or accentuated certain peculiarities of habit, of temperament, and of character, which clearly distinguished it as a race from the whites. A patient, docile people; but careless, landless, migratory within narrow limits, without forethought; and its criminal members given to furtive offences, rather than the robust crimes of the whites. Restrained by the Federal Constitution from discriminating against the negro race, the convention discriminates against its characteristics, and the offences to which its criminal members are prone." But nothing tangible can be deduced from this. If weakness were to be taken advantage of, it was to be done "within the field of permissible action under the limitations imposed by the Federal Constitution," and the means of it were the alleged characteristics of the negro race, not the administration of the law by officers of the State. Besides, the operation of the constitution and laws is not limited by their language or effects to one race. They reach weak and vicious white men as well as weak and vicious black men, and whatever is sinister in their intention, if anything, can be prevented by both races by the exertion of that duty which voluntarily pays taxes and refrains from crime.

It cannot be said, therefore, that the denial of the equal protection of the laws arises primarily from the constitution and laws of Mississippi, nor is there any sufficient allegation of an evil and discriminating administration of them. The only allegation is ". . . by granting a discretion to the said officers, as mentioned in the several sections of the con-

stitution of the State, and the statute of the State adopted under the said constitution, the use of which discretion can be and has been used by said officers in the said Washington County to the end here complained of, to wit, the abridgment of the elective franchise of the colored voters of Washington County, that such citizens are denied the right to be selected as jurors to serve in the Circuit Court of the county, and that this denial to them of the right to equal protection and benefits of the laws of the State of Mississippi on account of their color and race, resulting from the exercise of the discretion partial to the white citizens, is in accordance with and the purpose and intent of the framers of the present constitution of said State. . . ."

It will be observed that there is nothing direct and definite in this allegation either as to means or time as affecting the proceedings against the accused. There is no charge against the officers to whom is submitted the selection of grand or petit jurors, or those who procure the lists of the jurors. There is an allegation of the purpose of the convention to disfranchise citizens of the colored race, but with this we have no concern, unless the purpose is executed by the constitution or laws or by those who administer them. If it is done in the latter way, how or by what means should be shown. We gather from the statements of the motion that certain officers are invested with discretion in making up lists of electors, and that this discretion can be and has been exercised against the colored race, and from these lists jurors are selected. The Supreme Court of Mississippi, however, decided, in a case presenting the same questions as the one at bar, "that jurors are not selected from or with reference to any lists furnished by such election officers." *Dixon* v. *The State*, Nov. 9, 1896, 20 So. Rep. 839.

We do not think that this case is brought within the ruling in *Yick Wo* v. *Hopkins*, 118 U. S. 356. In that case the ordinances passed on discriminated against laundries conducted in wooden buildings. For the conduct of these the consent of the board of supervisors was required, and not for the conduct of laundries in brick or stone buildings. It was

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admitted that there were about 320 laundries in the city and county of San Francisco, of which 240 were owned and conducted by subjects of China, and of the whole number 310 were constructed of wood, the same material that constitutes nine tenths of the houses of the city, and that the capital invested was not less than two hundred thousand dollars.

It was alleged that 150 Chinamen were arrested, and not one of the persons who were conducting the other eighty laundries and who were not Chinamen. It was also admitted "that petitioner and 200 of his countrymen similarly situated petitioned the board of supervisors for permission to continue their business in the various houses which they had been occupying and using for laundries for more than twenty years, and such petitions were denied, and all the petitions of those who were not Chinese, with one exception of Mrs. Mary Meagles, were granted."

The ordinances were attacked as being void on their face, and as being within the prohibition of the Fourteenth Amendment, but even if not so, that they were void by reason of their administration. Both contentions were sustained.

Mr. Justice Matthews said that the ordinance drawn in question "does not describe a rule and conditions for the regulation of the use of property for laundry purposes, to which all similarly situated may conform. It allows without restriction the use for such purposes of buildings of brick or stone; but as to wooden buildings, constituting all those in previous use, divides the owners or occupiers into two classes, not having respect to their personal character and qualifications for the business, nor the situation and nature and adaptation of the buildings themselves, but merely by an arbitrary line, on one side of which are those who are permitted to pursue their industry by the mere will and consent of the supervisors, and on the other those from whom that consent is withheld, at their mere will and pleasure." The ordinances, therefore, were on their face repugnant to the Fourteenth Amendment. The court, however, went further and said: "This conclusion and the reasoning on which it is based are deductions from the face of the ordinance, as to its

necessary tendency and ultimate actual operation. In the present cases we are not obliged to reason from the probable to the actual, and pass upon the validity of the ordinances complained of as tried merely by the opportunities which their terms afford of unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned in *Henderson* v. *Mayor of New York*, 92 U. S. 259; *Chy Lung* v. *Freeman*, 92 U. S. 275; *Ex parte Virginia*, 100 U. S. 339; *Neal* v. *Delaware*, 103 U. S. 370; and *Soon Hing* v. *Crowley*, 113 U. S. 703."

This comment is not applicable to the constitution of Mississippi and its statutes. They do not on their face discriminate between the races, and it has not been shown that their actual administration was evil, only that evil was possible under them.

It follows, therefore, that the judgment must be

Affirmed.

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